THE FUNDAMENTALS OF HUNGARIAN PRIVATE LAW

Edited by
JÓZSEF BENKE

THIS WORK WAS SUPPORTED BY
PROJECT NO. EFOP-3.4.3-16-2016-00005


PÉCS
2020
## SUMMARY TABLE OF CONTENTS

**Benke, József:** The General Part of Hungarian Private Law (Historical and Doctrinal Foundations)

1. A Concise History of Hungarian Private Law and Jurisprudence
2. Basic Doctrines of Hungarian Private Law

**Nohéta, Tibor:** Fundamentals of the Law of Persons

1. General Rules of Legal Persons
2. The Rules of Particular Legal Persons

**Benke, József:** Fundamentals of Law of Rights In Rem

1. General Part
   1.1. The Doctrine of Norms of the 'Law of Rights In Rem'
   1.2. The Doctrine of In Rem Legal Relationships
2. Special Part
   2.1. The Law of Possession
   2.2. The Law of Ownership Rights
   2.3. The Law of Limited Rights In Rem
   2.4. The Law of Public Registers of Rights In Rem

### Chapters from the Law of Obligations

1. **Benke, József:** Basic Issues of Obligation and Law of Obligations
2. **Mohai, Máté:** Settlement of the Obligation
3. **Fábo, Tibor:** The Formation of contracts
4. **Bércesi, Zoltán—Hárci-Kovács, Kolos:** Invalidity of the Contracts
5. **Benke, József:** Ineffectiveness of Contracts
6. **Mohai, Máté:** Performance of the Contract
7. **Nohéta, Tibor:** Breach of Contract
8. **Fábo, Tibor:** Confirmation of Contract
9. **Fábo, Tibor:** Contracts Transferring Ownership Rights
10. **Nohéta, Tibor:** Contracts for Professional Services
11. **Fábo, Tibor:** Contracts of Carriage
12. **Bércesi, Zoltán—Hárci-Kovács, Kolos:** Engagement-Type Contracts
13. **Benke, József:** Licensing Contracts
14. **Mohai, Máté:** Deposit Contracts
15. **Fábo, Tibor:** Credit and Account Contracts
16. **Bércesi, Zoltán:** Guarantee Agreements
17. **Nohéta, Tibor:** Insurance Contracts
18. **Benke, József:** Contracts for Maintenance and Life-Annuity
19. **Fábo, Tibor:** Civil Law Partnership
20. **Fábo, Tibor:** Civil Partnership
21. **Nohéta, Tibor:** The Principles of Tort Law
22. **Benke, József:** The “Other” Facts Establishing Obligation

**Fábo, Tibor:** Fundamentals of Law of Succession

1. Fundamental Legal Definitions
2. Succession by Testamentary Disposition
3. Intestate Succession
4. Compulsory Share of Inheritance
5. Legal Effects of Succession

**Benke, József:** A Selected Foreign Language Bibliography on Hungarian Private Law
1. A CONCISE HISTORY OF HUNGARIAN PRIVATE LAW AND JURISPRUDENCE

1.1. The History of Hungarian Private Law until its Codifications

Although the process of the Hungarian private law codification has a long duration and it was also rich quantitatively and qualitatively as well, the successful outcomes of this long lasting proceeding are represented by our former Civil Code of 1959 (this Hungarian Civil Code abbreviated as HCC or former or 1959 HCC) and our Civil Code in effect of 2013 (abbreviated as new HCC or NHCC or 2013 HCC). Many results of the codification attempts remained, namely, voluntary sources of law, since these were used in the judicial practice, albeit could not come into force legally.

The first meaningful and comprehensive effort of Private Law codification in our country, which has a more than 1100 years old statehood, was the so-called Tripartitum opus juris consuetudinarii inclyti regni Hungariae often called simply as Tripartitum. This opus contained the systematised conglomerate mainly of the Hungarian nobility (or aristocratic) feudal customary private law. It was elaborated by István Werbőczy in 1514 under the reign of Vladislaus II of Hungary (1490–1516). The Tripartitum had got the royal assent but it had never been promulgated as law, therefore courts could only have been using it as a de facto source of law. The key significance of the Tripartitum was the fact that this was the main legal source, which had made Hungarian private law independent of the Roman and of the Canon Law for centuries. Some old institutions have survived the centuries and remained in effect also in the NHCC, such as e.g. the idea of the lineal succession (see Book 7 § 67 = Section 7:67).

Then, the Corpus Juris Hungarici was the first complex unofficial body of laws, which incorporated all Hungarian laws from 1000 to 1696. The other meaningful legal source was the Planum Tabulare, which was accepted by the Sovereign Maria Theresa and the Full Court of the Curia (Supreme Court) in 1769. It comprehended the private law practice of Hungarian courts of higher instances.

The next turning point in our history of private law codification was the Hungarian Revolution of 1848. The Act 15 of 1848 of the revolutionary legislation (‘April Laws’) envisaged a Civil Code, which can transform the feudal private law regime into its new order of the citoyen symbolizing the spirit of Equality of Rights and that of Free Property. This vision had remained a dream, which had come true only partially and in a very different ‘mood’ in the 20th century, i.e. the era of the communists...

The fall of the Revolution (1849) meant also the declension of the Hungarian private law. The former legal regime had been broken down and the newer one had not yet been elaborated. This vacuum was
filled up or rather obtruded by the private law system of the oppressor State, so by that of Austria. The *ABGB* (*Allgemeines Bürgerliches Gesetzbuch*, i.e. General Civil Code) of the Austrians of 1811 had come into effect by the Emperor’s open command in 1852 and had remained in force until 1861. The Austrian Civil Code has opened the door for the influence of Roman and German Private Law Jurisprudence, i.e. the so-called ‘Pandektenrecht’. The door has remained unclosed until these days.

The process of easement between the two countries, which concluded in the *Austro-Hungarian Compromise of 1867* started in 1860. The Judge Royal (similar institution to the Lord Chief Justice of England) summoned an assembly of leading judges and jurists in 1861. The *Session of the Judge Royal* adopted the so-called *Provisory Jurisdictional Regulations*, a compendium of written customary laws elaborated for the support of the judicial praxis. The lacunas especially in the Hungarian contract law regime and the regime of law of rights in rem remained, however, so extensive, that its stand necessitated the use—now the voluntary use—of the *Austrian Civil Code* and that of the *German Private Law Jurisprudence* for such cases, which could not be decided upon the Hungarian laws.

### 1.2. The Process of Hungarian Private Law Codification

Today in Hungary, there is a theoretically and even practically well-established and ‘up-to-date’ civil code, which came into force in the Fifteenth of March, 2014. The law is called the *Act V of 2013 on the Civil Code* (thereinafter: New Hungarian Civil Code, abbreviated as NHCC or New HCC). The former Hungarian Civil Code (abbr. as FHCC or former HCC) was the *Act IV of 1959* in effect from the First of May, 1960 until the Fourteenth of March, 2014. However, these two codes are the only laws in the long duration period of Hungarian private law codification process, which could come into effect. The reasons lay in historical and political circumstances not to be detailed here.

We shall now turn to the outcomes of the century-long procedure of the Hungarian private law’s codification—in a ‘modern’ sense of codification. Our first thesis is that the codification of the Hungarian private law is preceded by that of the commercial law similarly to many other countries of the European Continent. Our first code in effect in the wider area of private law was, namely, the *Act XXXVII of 1875 on the Commercial Code*, which was based on its German predecessor, i.e. the *Allgemeines Deutsches Handelsgesetzbuch* (*ADHGB* otherwise as the General German Commercial Code of 1861).

The Hungarian Commercial Code was then followed by the many unsuccessful codification attempts in the field of ‘pure’ private law. The process of codification had continuously been escorted by the huge efforts of the *Justices of the Hungarian Royal Curia* (Supreme Court). Their results were meaningful jurisdictionally and in the sense of the jurisprudence as well. The Justices could therefore give a great inspiration for the codification, too. Some private law institutions were born just in this very era (e.g. the liability for hazardous operations).

The next turning point in the history of codification is the *Bill of Hungary’s Private Law Code* (abbreviated in Hungarian as ‘MTJ’) of 1928 drafted by Béla Szászy (1865–1931). The MTJ was preceded by the Drafts of the two official Bills of the *Hungarian General Civil Code* (1900, 1913) and some newer readings of the 1913 Draft. Albeit it had never come into effect as a law code, the MTJ had played a significant role as a written, codex-like canon for the jurisdiction, which, through the praxis of the courts, took then a part as the main source of the new Hungarian written customary private law. The scholars elaborating the draft of the code greatly respected the achievements of the *Swiss* and the *German* private law codification and jurisprudence, although in many questions they consciously rejected to follow them. In these laws, namely, some inherent practical and theoretical or dogmatic problems had already emerged, such as the question of an *Allgemeiner Teil* (General Part) being enthroned onto the apex of the certain civil code. As a post-war effect of the tragic and unfair dismemberment of the Kingdom of Hungary by the Treaty of Trianon (1920), the country had no more interest in accepting the MTJ and giving it legal effect as a law code. A homogeneous new private law would have legal effect only within the new tight borders of the State. Therefore, it would build a deeper distance between the former parts and Peoples of the country instead of narrowing them to each other. Thus, the MTJ failed in the 1935 Parliament. However, even Trianon could not stop the evolution process of the private law, nevertheless the legislation’s ‘tool’ was that it accepted many specific laws such as the *Act V of 1923 on the Unfair
Competition or the Act XXXV of 1927 on Mortgages. Until the end of the 1940s, there were two periods of different intermediary obligatory laws: the one was the crisis law in the early 1930s, the other was the laws of war (martial law) and the anti-Semitic laws right before and during World War II. As such these laws limited the contents of the basic constitutional rights of ownership and confined the substances of natural persons’ most important legal capacities.

The following period of greater extent in Hungarian private law history is the era of the communist and then on that of the socialist private law. This epoch had started also as an intermediary period of time in 1948, however, it had lasted more than four decades, until 1989. The epoch’s first period until the codification of the 1959 HCC was not less obligatory (mandatory) and not less restrictive with respect to the rights to private property, freedom of contract, freedom of entrepreneurship etc., which was maintained also in the 1959 HCC. However, this Code was not clearly communist but it could support also the legislative demands of the simple commodity production, because the drafting scholars of the 1959 HCC, such as Gyula Eörsi (1922–1992), Miklós Világhy (1916–1980), Lórentz Rudolf (1904–1979), György Csanády (1917–1986), Endre Nizsalovszky (1894–1976) had a wide knowledge of the European Legal Culture and European Private Law Tradition.

The so-called New Economic Mechanism, which had started in 1968, tried to renovate and change the central planning system as the basis of socialist economy to a new economic policy, which could create special market relationships among State firms and other embryonic market firms, and which could use prices more freely as allocators. This made firms to maximise their profit, and this profit could create a more valuable budget for newer and newer investments. These efforts obviously necessitated certain changes also in the paradigms of codified private law. The result of this process of comprehensive modification (i.e. Novel) was the HCC’s 1977 Novel. The 1959 HCC had several other Novels until and after the period of the Political Transition in 1989, such as the 1996 Novel on mortgage law, and its last comprehensive modification on consumer protection law in 2006.

The recodification process of the HCC started in 1998. The Head of the Civil Law Codification’s Main Committee (MC) and the Civil Law Codification’s Editorial Committee (EC) was Lajos Vékás (1939–) from 1999 to 2012 with interruptions. The members of the MC were incumbent political potentates and the legal professions’ coryphaei. The EC’s members were, however, professors of private law and justices of courts of higher instances. These leading jurists were György Boytha (1929–2010), András Kifaludy (1958–), Tamás Lábsady (1944–2017), Ferenc Petrik (1933–), Tamás Sárközy (1940–), Emília Weiss (1927–2014) és János Zlinszky (1928–2015). The outcome of the Committees work was the so-called Experts’ (otherwise as Academic Proposal) (2008).

The first proclaimed law on the (New) Civil Code of Hungary was the Act CXX of 2009. The then Ministry of Justice—because of some clearly detectable political reasons—ignored Committees’ President and Members, thus the result was structurally inconsistent and problematic in the details. The Act on Giving Effect to this Code was annulled by the Constitutional Court with respect to the reason of an insufficient preparatory period. In 2010, the new Government adopted a Decision on the re-erection of the former Committees (MC and EC) adding to them the Civil Law Operative Technical Committee. December 2011, the Draft Text was handed over to the Ministry of Justice, which brought it unchanged to a Social Debate in 2012. With a few amended proposals, the Parliament accepted and enacted then the new HCC, i.e. the Act V of 2013. The new HCC has eight books such as (1) Introductory Provisions, (2) Natural Persons, (3) Legal Persons, (4) Family Law, (5) Law of Rights In Rem, (6) Law of Obligations, (7) Law of Succession, (8) Closing Provisions. The Chapter on the law of mortgages (Book 5) has already been comprehensively modified in 2016 as well as the law of securities (Book 6) in 2017.

1.3. A Concise History of Hungarian Private Law Jurisprudence

The communistic and later on socialist private law jurisprudence between 1948 and 1988 (1990) was an ideological counterpart of the so-called ‘modern’ Hungarian private law jurisprudence, the deepest direct roots of which were born in the middle of the 19th century. This period was the era of attempts to cease the post-feudal legal regime, the undoubted opus magnum of which was Werbösz’s Tripartitum elaborated in the 16th century (see above). Our contemporaneous private law jurisprudence is based on the outcomes
of its mentioned 19th century ‘modern’ period. The starting point of our ‘modern’ jurisprudence is Ignatius Frank (1788–1850), whose ‘Principles of Hungarian Civil Law’ of two volumes printed originally in Latin (‘Principia juris civilis hungarici’, 1828–1829) is very meaningful with respect to four reasons:

- the first one is the work’s high standard of scientific and abstract intensity, by which it disunited the private law and the law of civil process;
- the second one is that it examined hundreds of years of judicial practice;
- the third one is its synthesizing character, which was capable of building bridges between the threesome fundament of those days’ Hungarian legal regime, which were the Post-Feudal, the Pandectist and the Austrian legal basis of it;
- the fourth one was that it was translated into Hungarian establishing a new Hungarian terminology of private law, albeit its language became very obsolete and hardly comprehensible nowadays, its true worth would deserve a much deeper research in connection with the 18–19th century Hungarian process of Language Reform.

The independent Hungarian Private Law Jurisprudence started in the 1880’s, and lasted some six decades until the end of the 1940’s, when communist ideology ceased not only Hungarian State independency but also that of legal thinking. According to Nizsalovszky (see above), our independent jurisprudence had three different tendencies:

- The national trend, the leading authority of which was Béni Grosschmid (1852–1938). His monumental collection of essays of two round volumes, which is headed as ‘Chapters from Our Law of Obligations’ showed a totally new thinking on the subject in a wider European sense, too. Its essential character is well conveyed by the fact that his also prominent disciples—especially Károly Szladits (1871–1956)—wrote the ‘Gloss’ of three huge volumes for interpreting his legal thoughts to the after-world.

- The liberal school was counterpoint trend to the national one in a sense of the differences between the oeuvre of Savigny and that of Jhering in Germany: if the ‘Hungarian Savigny’ was Grosschmid, it was Gusztáv Szigy-Schwarz (1858–1920), who undoubtedly shared—also as his disciple—the role of Jhering. The liberal school supported the idea of private law codification in a special Hungarian manner. This surprisingly meant that the German direction of private law codification is to be avoided, since the Hungarian school denied the necessity of codifying a ‘General Part’ (‘Allgemeiner Teil’) as the primal part of a new code. They held that the Swiss codification admired also by the social tendency (see below) would be a very useful ‘tool’ for supporting the ‘civil liberties’ during the process of the Hungarian private law codification.

- The social trend’s main goal was to enforce Social Justice in private law by expanding it to a much wider range of immaterial and personality rights. The leading authority of this school was Artúr Meszlény (1875–1937), who warmly respected the outcomes of the Swiss private law codification’s efforts.

The next period of Hungarian Private Law Jurisprudence was dominated by the mere trend of the Socialist Civil Law, which was based on the Hungarian dictatorial political regime supervised, directed and manipulated by an abroad force, i.e. the military and political supremacy of the Soviet Union. Since the theoretical basis was such, the Hungarian Socialist Civil Law did not tolerate either liberal or national ‘excursions’ in legal thinking. It is not less meaningful that the first effective civil law codification in Hungary was masterminded by the leading authorities of this era. The 1959 HCC (see above) supported the political regime through emptying the legal notions of private property, individual liberties and personality rights. However, its law of obligation has been able to offer a legal basis for the period of the political transition in 1988–1991 and onwards as well with severe modifications until NHCC (in force from March 15, 2014).

Since this historical chapter of our textbook does not consider its job to review and evaluate the outcomes of the living contemporaneous jurists’ oeuvre, we finish our survey of Hungarian Private Law Jurisprudence at the beginning of the 1990’s.
2. Basic Doctrines of Hungarian Private Law

2.1. The Concept of ‘Private Law’ and ‘Civil Law’

Since the set of the Private Law traditionally incorporated the set of the Civil Law, the previous category had a wider scope than the latter. The main territories of the historical issue of Private Law were, namely:

- **Civil Law** including
  - first, the hardly translatable category of the German “Vermögensrecht” which is circumscribed here by the artificial notion of Law of Possessions composed of the Law of Rights In Rem, the Law of Obligations, and the Law of Succession;
  - and later on including also the Law of Persons composed of the Law of Individuals, the Law of Legal Persons, and, by the codification of the NHCC, the Family Law, too;
- and then: **Company Law, Commercial Law, Private International Law, Labour Law, Law of Civil Procedure**.

Because of two facts, such clear differentiation of Private Law and Civil Law cannot be accepted these days. Therefore, we use these two notions in this book as parallel concepts with equivalent legal contents. The two reasons, because of what distinctions between Private Law and Civil Law became evanescent, are as follows:

- The first fact was a historical process started from the end of the 19th century, during which Labour Law, Civil Procedural Law and Private International Law became independent branches of law due to their public law character intensifying from decade to decade.
- As the second reason for the fading distinctions between Private Law and Civil Law, it was the codification of the NHCC, which in toto integrated:
  - The complexity of the Law of Possessions with that of the Law of Persons (see the content of these notions above), and with this broad complexity
  - **Company Law and Commercial Law** were also merged.

Therefore, the content of the legal notion of ‘Civil Law’ is today identical with the scope of the new Civil Code. According to this, we can make a use of the NHCC’s introductory norm defining the scope of the Code for the determination of the Civil Law as legal term. This says: “This Act governs the essential property and personal relations of persons under the principle of interdependence and the principle of equality” (see NHCC Section 1:1). Correspondingly, Civil Law is the branch of law, which regulates every essential question of property and personal relations either of an individual or of a legal person by using a regulatory style composed of the Principle of Interdependence and that of Equality.

2.2. The Sources of Private Law

1. So far as the main source of Hungarian legal system, the Fundamental Law of Hungary (henceforth: FLH) is concerned, it declares that “the rules for fundamental rights and obligations shall be determined by special Acts” (Art. I § 3], and, “subjects of law established by an Act [viz. legal persons—my remark] shall have the fundamental rights and obligations that by nature not only apply to natural persons” (Art. I § 4).

2. This means that a legal institution connecting directly to a fundamental right can be regulated exclusively in an act. Therefore, indirectly and more remotely affiliated institutions may be regulated in derived legal norms. With respect to these principles, we can divide up the legal norms into two classes:

- norms, which indisputably are direct and general sources of private law, and
- norms, the direct and general source-character of which is debated in private law jurisprudence.

a) According to this, unarguable direct general sources are as follows (the extent of the norms’ legal scope is top down continuously decreasing):

- The direct and general primary sources of private law are the Acts of Parliament, the EU Regulations, and the International Agreements.
- The direct and general derived sources of private law are government decrees, orders by the Prime Minister, ministerial decrees, orders by the Governor of the National Bank of Hungary, orders by autonomous regulatory bodies, local ordinances.
b) There are, however, other sources of law—be these either legal norms or the FLH itself which is per definitionem not a legal norm, viz. it stays above them) or such sources which merely behave as legal norms—, the direct and general source-character of which, in the sphere of the private law, is contested:

- The Fundamental Law of Hungary is itself a debated source of private law since there are only a very few provisions, which indeed have a direct effect also on private law and civil procedural law matters, i.e. for example:
  - liability for damages caused by authorities during the performance of their duties (Art. XXIV § 2),
  - inviolable right of human beings to life and dignity as the direct basis of rights relating to personality (Art. II),
  - and the general principle of application of laws (Art. 28).
- The major part of FLH-articles and paragraphs have a mere indirect scope in private law matters.

- Decisions of the Constitutional Court (see below as CC) can both indirectly and directly affect a certain private law dispute between the subjects of law [cf. Art. 24 § 2 b)–d), and Art. 24 § 3 a)–b) of FLH]:
  - at the proposal of judges, CC reviews any piece of legislation applicable in a specific case for conformity with the FLH, and annuls any piece of legislation which conflicts with it;
  - by a constitutional complaint of a participant in a concrete case,
    - CC also reviews any piece of legislation applied in the specific case for conformity with the FLH, and annuls those which conflicts with it;
    - CC reviews any court ruling for conformity with the FLH, and annuls any court ruling which conflicts with.

- Hungarian Supreme Court—called the Curia (Kúria)—makes Decisions on the Uniformity of Law for ensuring uniformity in the judicial application of laws. With respect to this duty, these decisions are binding on courts (cf. FLH Art. 25 § 3) applying e.g. the sources of private law. Since Decisions on the Uniformity of Law do not directly bind the subjects of law, they are not legal norms. However, as courts are to apply these Decisions mandatory, they have an indirect effect on the legal stand of subjects of law, therefore the CC stated that Decisions on the Uniformity of Law behave as legal norms [CC Decision 42/2005 (XI. 14).

- There are other judicial remedies for the purpose of ensuring uniformity in the judicial application of laws, too. Such are the Opinions, and the Commitments of Judicial Collegiums and the published case-by-case decisions either of the Curia or that of the Regional Courts of Appeal. These courts can enforce the use of their legal reasoning for similar cases through the review procedures (Curia) and the appeal proceedings. Courts of lower instances, such as the courts of justice and the district courts, therefore, deliberately follow the legal reasoning of the courts of higher instances.

- The Directives of the EU undoubtedly have effect upon private law institutions and regulations (e.g. consumer protection law), although this scope is merely indirect.

- The Case Law of the European Court of Justice and that of the European Court of Human Rights also can influence civil law matters, albeit in a more remote way. Case-by-case decisions can directly concern the special rights and obligations of subjects of law participating in the very legal process of the named courts.

- The problem, according to which customary law also functions as a source of private law, is an important and debated issue, too. However, the NHCC itself defines matters, in which the usages of the parties can behave as a special source of law, if they are judicially approved. Some of these cases are as follows.
  - Minors of limited capacity shall, without the involvement of their legal representatives, be entitled to conclude contracts of minor importance aimed at satisfying their everyday needs (cf. Section 2:12 § 2 b).
  - With exception of everyday dealings, an executive officer and his close relatives may not conclude any transactions falling within the scope of the main activities of the business association in his own name and on his own behalf (cf. Section 3:115 § 2).
  - Separate property of a spouse shall include personal effects and articles of personal use of customary value (cf. Section 4:38 § 1 e).
• When in doubt, ownership shall also extend to parts that are not components but are usually necessary or beneficial for the proper use … of a thing (cf. Section 5:16).

• Unless proven to the contrary, it shall be presumed that the sale of the pledged property is conducted under the principle of reasonable commercial practices if the sale takes place under normal market terms usually employed in the commercial sale of pledged properties (cf. Section 5:133 § 2 b).

• In commercial establishments and in publicly accessible places any person who is presumed under reasonable grounds to be authorized to make pertinent legal statements shall be construed as a representative (cf. Section 6:18 § 1).

• Under the contract the parties shall be bound by any usage which they have agreed on in prior business dealings and by any practice they have established between themselves. Furthermore, the parties shall be bound by a usage which would be considered generally applicable and widely known in the given sector by parties to similar contracts, unless such usages and practices are likely to conflict with contract terms which have been previously negotiated between the parties (cf. Section 6:63 § 5).

• The other party shall be explicitly informed of any standard contract terms that differs substantially from the relevant legislation and from usual contractual practice, except if they are in line with any practice the parties have established between themselves (6:78 § 2).

• If the buyer fails to make the statement within the time limit usually deemed necessary for testing the thing or within the deadline set by the seller, the contract shall remain in effect (cf. Section 6:229 § 2).

• Gifts of ordinary value shall not be reclaimed (cf. Section 6:237 § 5).

• If the agent is entitled to conclude the contract he has negotiated, his right of representation shall cover all legal statements which are usually required in connection with negotiated contracts (cf. Section 6:294).

• Among the provisions of intestate succession, by the obligation to restore gifts, NHCC orders that advancements of common value shall not be treated as advancements even if the decedent expressly stipulates it (cf. Section 7:56 § 3).

  – With respect to the principle of ‘contractus contrahentibus legem ponit’, which reads as “a contract for the parties shall be regarded as law”, there is a standpoint, according to which a negotiated contract is not only a matter of fact but also a legal source, from which the parties’ rights and obligations arise.

2.3. The Doctrine of Private Law Norms

Since private law regulates the essential questions of property and personal relations either of an individual or of a legal person by using the principle of interdependence and equality, the characteristics of a private law norm shall also have peculiar items, which distinguish these norms from the generally defined and classified notion of ‘legal norm’.

Some basic principles and classifications of the General Theory of Legal Norms can also be applied within the Doctrine of Private Law Norms, too.

  – The content either of ‘natural law’ or of ‘divine law’ norms is acrosanct, therefore these are untouchable by the State’s legislative power, which cannot constitute their merely declarable legal content. For instance, the NHCC declares theoretically that, with some exceptions, „all torts shall be considered as unlawful” (see Section 6:520). The norm constituting the general liability for damages (cf. Section 6:519 below) is directly based on this very declaration. The legal background of the declaration in Section 6:520 is the divine or natural law command (praeceptum iuris), according to which „alterum non laedere”, viz. „not to injure one” (stated Ulpian; cf. Digest of Justinian 1, 1, 10, 1).

  – According to Legal Positivism, the content of a legal norm is the command of the State, thus the expression of the legislator’s will for appointing the boundaries of the persons’ expected behaviour. See e.g. „any person causing damage to another unlawfully shall be liable for it” (6:519).
– An ‘institutional norm’ defines the content of a legal institution’s technical term (legal notion) through either definitive or interpretative norms. A ‘behavioural norm’ specifies the substance and form of the anticipated conduct of the subjects of law. See for instance the definition of the “business association”, according to which “a business association is a legal person established for the pursuit of business operations with financial contribution provided by its members, where each member has a right to a share of the profit and an obligation to participate in covering the losses” [Section 3:88 § 1].

– There are autonomous and non-autonomous norms.

  • An autonomous norm contains both hypothesis and legal effect.
    
    ▪ The so-called matters of fact (hypothesis), implies the relevant facts and circumstances of the world surrounding us, under the occurrence of which the norm aims to achieve the expected legal effect motivated by the social standing either to be maintained or to be changed. Hypotheses can be colourfully classified since:
      - there are general and special hypotheses,
      - there are hypotheses that declare the rule and that declare the exception,
      - there are hypotheses that are fully defined and that use abbreviated legislative structures such as legal fictions, and either rebuttable or irrebuttable presumptions.
    
    ▪ Legal effects are threefold.
      - Namely, the legal effect called ‘disposition’ can constitute either a private law duty either for doing something, for doing something else, for tolerating something (imperative norms), or for doing nothing or not doing something (prohibitive norms);
      - There is a legal effect called positive legal consequence,
      - and another one called ‘sanction’, which is a negative legal consequence, such as liability or responsibility. Private law sanctions have a variegated classification since we can distinguish, on the one hand, reparative, restrictive, and preventive sanctions, and, on the other hand, objective and subjective sanctions.

  • A non-autonomous norm is to be implemented either by the content of other norms, or by metajuristic, i.e. non-juridical items such as ethical or moral issues (e.g. good faith, morality, equity), and social customs. Non-autonomous norms are deficient since these do not have hypothesis or are lack of legal effect or have none of them. Such norms are:
    
    ▪ the restrictionary otherwise qualificatory norms, which narrow the scope of the law to be implemented by these (e.g. “The legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings.”); cf. 3:1 § 2;
    
    ▪ the ampliative alternatively denotative norms, which broaden the scope of the law to be applied together with itself (e.g. “the provisions pertaining to things shall apply to animals in accordance with the statutory provisions laying down derogations consistent with their natural characteristics”; cf. Section 5:14 § 3);
    
    ▪ the outcomes of framework legislation, e.g. the so called ‘general clauses’, the deficient legal content of which is implemented by legal and non-legal items determined either by the parties or by the jurisdiction (such elastic wordings as e.g. “disproportional” or “important ground”);
    
    ▪ an institutional norm is either a definitive norm (e.g. the definition of LLC in Section 3:159) or an interpretative norm (defining how shall be the notion of “consumer” explained when the NHCC uses this term; cf. Section 8:1 § 1 point 3).

– Private law norms can be either dispositional or mandatory rules:

  • a dispositional norm permits derogation by the parties’ unanimous declaration;
  
  • the content of a mandatory rule is binding irrespective of the parties’ common intentions.

– Private law norms have three different kinds of scope, namely the territorial, the personal, and the temporal scope. The question of private law norms’ temporal scope brings up a constitutional law issue, too. Namely, the problem of retroactive effect is a sensitive item since a novel law may touch legal relationships, which came into existence during the former legal status (status quo ante), i.e. before the new law’s force. Which are the boundaries of the lawmaker? The constitutional principle of
preservation of acquired rights and the principle of legal certainty shall be guaranteed also in private law matters. Thus, NHCC declares that “if the contents of an existing contract are to be amended pursuant to a newly adopted legislation, and the amended content of the contract is against the relevant lawful interests of any of the parties, the party so affected shall be entitled to request the court to amend the contract, or shall be entitled to withdraw from the contract” (6:60 § 2).

2.4. The Theory of Private Law Jurisdiction and Norm Application

The rights afforded in the NHCC are protected by legal remedies under the authority of courts. Therefore, these rights may be enforced by judicial processes, and no other sources of law but Parliamentary Acts may provide otherwise (cf. Section 1:6). Thus, exceptionally, courts of arbitration (Act LX of 2017 on Arbitration) and administrative authorities (e.g. the notary in cases arising from protection of possession) may also be non-judicial forums of private law norm application. The application of abstract norms to concrete cases which have relevant specific circumstances as well as peculiar facts is an intellectual effort sometimes in an ‘artistic’ high level. The ‘forums’ for applying private law are of triplex kind:

- Such sophisticated activity of courts is called the ‘jurisdiction’ after the historical Latin phrase of “ius dicere”, i.e. “to speak the law”.
- But if law is applied by non-judicial fora, we call this form simply ‘application of law’ or ‘private law norm application’.
- It is also private law application, if subjects of law unconsciously use private law to form contracts or other private law facts for obtaining their personal goals.

With respect to the fact that there is no perfect, infallible, and seamless entity created by human intelligence, and, therefore, even legal systems are imperfect, incomplete, and lacunar (“lacuna legis” means “the gap of the law”), the role and the methodology of jurisdiction and that of private law norm application is a basic problem of jurisprudence. Private law norms’ application has three kinds of approaches as follows.

- Judicial application of law is a logic operation of special kind, during which the judge, who is the subject of the process of applying an abstract legal norm, leads the procedure composed of the following elements:
  - cognizing the facts provided by parties or obtained by other licit methods in a legally bound procedural order of probation;
  - detecting and then separating the relevant facts from the previously attained mass of data; a fact is relevant since it is significant, substantial, and indispensable for making the decision;
  - settling and defining the matters of facts of the special case from the composition of relevant facts;
  - searching the abstract norm demanding application for the specific case by using different methods of legal interpretation, and thereafter subjecting the case’s matters of fact to the abstract norm’s hypothesis (subsumption);
  - after subsuming the case to the norm, there is another operation to be performed, which is the application of the norm’s legal effect (disposition or positive legal consequence or sanction) to the case.

- The interpretation of private law norms is nonetheless an essential element of the procedure of application of law. Jurisprudence holds that there are three kinds of interpretation with respect to the type of the subject conducting it. Namely, laws can be interpreted not only by jurisdiction but also by the lawmaker (interpretatio authentica), and likewise by jurisprudence (interpretatio doctrinalis), too. Jurisdictional interpretation of law has many different techniques:
  - the grammatical interpretation examines the text of the norm from the angle of the rules of grammar; if its outcome is dissatisfactory, the next step is:
  - the logical interpretation, during which the content of the special law can be detected through the inherent order of the norm; if this method also leads to unsatisfying result, the following approach is:
  - the systematic interpretation of the contexts and textual surroundings of the specific law to be applied; the legal context is to be investigated within the same act (order, decree etc.) and in
other acts (orders, decrees etc.) and in the Fundamental Law or in general principles of law as well; if the conclusion of this way of interpretation remains disappointing, the next manner is:

- the teleological interpretation, which researches the aim of the lawgiver for making that specific textual appearance of the law, and closely linked to this method:

- the historical interpretation of law provides the cognition of the law’s socio-economic background by the time of its enactment.

- The Fundamental Law (FL) creates an elegant combination of methods of legal interpretation. To follow this direction—let us call it constitutional interpretation of law—is the duty of courts. The Art. 28 says that in the course of the application of law, “courts shall interpret the text of legal regulations primarily in accordance with their purposes and with the Fundamental Law. (While examining the purpose of the regulation, the Preamble thereof and then the Motives of its Bill making or amending law, shall be taken primarily into consideration.) When interpreting the Fundamental Law or legal regulations, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good”. (The sentence standing between square brackets above shows the newly inserted text through the FLH’s Seventh Amendment coming into force from 1 January 2019.)

- The mentioned legum lacunae (regulatory gaps or legal vacuums) can cause three kinds of defects in the process of application of law. The one unlucky outcome is the applicable norm’s inapplicability (applicatory gap), and the other dissatisfying result can be either the unacceptable effect (critical gap) or the versatile conflicting consequence (alternative gap) of the application of law.

- The main method applied for terminating such legal vacuums is the analogy. Analogy transfers the legal effect of a parallel norm enacted for cases similarly as the case, which shall be decided without any direct law enacted for it (analogia legis). If there is no parallel law enacted for similar cases, also general principles of law can be used for making the decision (analogia iuris).

2.5. The Doctrine of Private Law Relationships

1. Private law governs the essential property and personal relations of persons (Section 1:1 of NHCC). These relations can be called ‘life situations’ (or otherwise life conditions). The mentioned life situations, since they have been regulated by law, transform into ‘legal situations’, which can be variously classified.

The one group of legal situations incorporates the single person’s legal position.

- The one sub-division of this group contains the single person’s legally relevant capabilities called capacities of law such as e.g. the main capacities, i.e. legal capacity and ability to act. There are also sub-capacities of persons belonging to one of the mentioned main capacities such as the capacity to inherit, the capacity to contract, the capacity of acquisition of property, the capacity to commit fault (with liability for the committed damage), the capacity of making decision for one’s own etc.

- The other sub-division of this group of legal positions implies the single person’s legally relevant standings called status. In case of human beings (natural person) such is e.g. the gender; the age; the family law status; the name; the intentional, volitive, emotive condition of a person; the physical or mental (dis)abilities; the habitation or residency. In case of legal persons such standings are among others its status of registry, place of registered office as well as its name.

The other group of legal situations involves not the single persons’ legal positions but the interpersonal relationships of two or multiple persons. This special legal—i.e. legally regulated—situation of multiple persons is called the legal relationship. Legal relationships in the territory of private law are named as private law relationships. Legal relationships as such can exist only between persons, i.e. solely between the subjects of law. Referring also to examples of legal history, some trends in private law theory say that a legal relationship can exist between subject of law and object of law or even between objects of law, too. This approach is, however, totally misleading and false. This statement is proven by the achievements of ancient Roman law, too. This nearly two millennia old legal system, without any demand for an abstract legal definition of the notions of ‘subject of law’, ‘person’ or ‘legal relationship’, obtained that a legally relevant connection between a subject of law and an object of law is not a legal situation but a power position called ‘potestas’. It also achieved that an interrelation between the objects of law is by no means a legal relationship but a
so-called *coherence of things* (called in Greek originally ὁμορρίματος (synemonoi) and in Latin *cohaerentia corporum*; cf. Sabinus/Pomponius, in: Digest of Justinian 41, 3, 30 pr.).

2. Private law relationships’ four major attributes are (a) the *structure*, (b) the *subject*, (c) the *object* and (d) the *content* of the relationship.

*Ad (a)* With regard to the *structure of private law relationships*, there are *relative* and *absolute* private law relationships. The legal relationship is relative if *every subjects of the relationship are certain* (defined). Since only up to one *subject is certain*, the relationship is *absolute* in its structure, therefore the other subject of these relationships is theoretically an uncertain mass of people (namely, if the number of mankind is N, the number of this side of relationship is N–1 where 1 is the entitled party). Legal relationships arising from obligations—such as contracts, quasi-contracts (e.g. unjust enrichment or negotiorum gestio), and *torts*—are generally *relative* but in *rem* legal relationships are usually *absolute*.

In a *relative* private law relationship, parties are *originally defined certain* persons. Without certain subjects of relationship, no relative private law relationship can exist. Therefore, relative private law relationships without two well-defined certain subjects are called *non-existing or failed (not formed)* legal relationships.

In an *absolute* private law relationship, solely the party entitled by law is defined, and all other persons are obliged to *acknowledge* this party’s rights, and to *tolerate* the exercise of these rights, and to *desist from* violating the entitled party while exercising his/her rights as well. An absolute legal relationship *transforms into relative*, if a certain person of the faceless mass of persons standing in the obliged side of the private law relationship wrongfully acts and hurts the position of the other (originally certain) party standing in the entitled side of the legal relationship. The infringement of the obligation of acknowledgement, tolerance, and desistance *creates an obligation—a relative legal relationship*—between the infringed (injured) party and the infringer (injurer) party for the *desistance of infringement* and for the *compensation of disadvantageous consequences of the harm* (i.e. the conflict of interests e.g. a damage).

*Ad (b)* The *subjects of private law relationships* based on the *principle of interdependence and the principle of equality* (cf. Section 1:1 of NHCC) can be classified with respect to their position in the legal relationship:

– the entitled party (creditor, obligee) standing in the *active side* is called ‘dominus’ (i.e. ‘master’),
– the bound party (debtor, obligor) standing in the *passive side* is called ‘servus’ (i.e. ‘servant’).

This *axiomatic dogma* of dominus–servus figuration of private law relationship is, however, *misleading and false* in respect of several reasons, namely:

– The relationship of *dominus* and *servus*—parallel to that of master and servant—is by nature *hierarchical*, which is not at all familiar with private law relationships, which are based on the principles of *interdependence and equality* (cf. Section 1:1 of NHCC).
– In vast majority of private law relationships, and typically in contractual obligations, parties can simultaneously take *both* of these positions with respect to their *main rights* and *main duties*; see the example of the position of a purchaser (buyer, vendee) who is *synchronously* entitled to the purchased thing and obliged to pay the price, and *vice versa* the seller.
– *Activeness and passiveness* in different sides of private law relationships can be proper interpreted rather in *absolute*, i.e. in *rem legal relationships*, not in *relative* ones; viz. the legal position e.g. of an owner (a proprietor or a possessor)—as the sole certain party of an absolute legal relationship—, which is *rather active* than passive because this party is *entitled to exercise* his/her rights, faces the legal position of the other side of the legal relationship, which is originally not defined, and which is bound *solely to passive* forms of conduct (behaviour): i.e. the acknowledgement, the tolerance, and the desistance from violating). In obligations, and especially in contractual relationships—where parties usually do take both types of subjectivity (viz. that of *dominus* and *servus*)—activeness is characteristic even in the side of the *servus* (debtor, obligor), since it is *bound to act* i.e. to perform his/her duties, but *dominus* (creditor, obligee) is obliged typically to a *passive* conduct (behaviour): i.e. to accept the (good, satisfactory, adequate, proper) performance.

*Ad (c)* Theoretically, the *object of private law relationships*—as in case of every kind of legal relationships—is twofold: *direct* and *indirect*. The *human conduct* (human behaviour) is held to be the *direct* object of private law relationships, in the background of which always stands a normatively preferred interest called *legal interest*. The *indirect* object is the asset—tangible property, right or claim—itself, which the human behaviour is directed to. For instance, as a human behaviour, the *performance of a private law duty* is the *direct*
object of a private law relationship, while the certain asset targeted by that very performance is the indirect object of it. Similarly, the direct object of a personal or a family law relationship is also human behaviour. However, the indirect object of such legal relationships is hardly detectable since an asset can be the object of these human conducts very exceptionally. Therefore, it seems more correct to state that the indirect object of a personal or a family law relationship is rather the legal institution (e.g. the marriage), which is targeted by the human behaviour (e.g. the act of marriage).

Ad (d) The content of the private law relationship is the composition of substantive rights and duties arising from it. No substantive right can exist without its subject, i.e. without a subject of law entitled to this very substantive right. The substantive right of a subject of law (person) means his/her possibility to act protected by State powers. This protection applies through judicial processes and procedures of administrative authorities within the boundaries of substantive and procedural laws. Substantive rights can be classified in multiple ways with the remark that these versions of substantive rights below are often combined with each other from practical reasons:

- There are material rights—such as rights in rem, contractual rights and inheritance rights defined altogether as “proprietary rights”—, and immaterial rights or otherwise known as rights relating to personality—such as privacy, personality rights of individuals and inherent rights of legal persons.
- On the one hand, exclusive rights (or rights to exclude) arising usually from absolute private law relationships grant the exclusion of others from the enjoyment of that specific right. On the other hand, claim rights (or rights to claim) emerging generally from relative private law relationships allow its subject to seek a certain direct object of legal relationship, i.e. a certain human behaviour—e.g. transferring a certain asset, paying a certain sum of money or giving a defined compensation which are the indirect objects of the legal relationship—from the other, i.e. the bound party.
- On the base of an active or positive right, the entitled party can claim for the active behaviour of obliged party such as doing, giving, acting something. On the ground of a passive or negative right, the entitled one can demand a passive conduct or non-conduct from the bound one like doing, giving, acting nothing.
- There are moreover marketable (or negotiable or transferable) rights, and non-marketable rights. I shall emphasise with respect to the combinations of substantive rights’ genres that marketable rights are by nature usually material positive claim rights, while non-marketable rights are immaterial exclusive negative rights in principle (see above).

Perfect rights are those, which have already come fully in existence, while there are also such kinds of substantive rights, which have not yet completely formed (prospective entitlements). These last ones are called reversions (see detailed below);

- Some rights can only be exercised with respect to other rights but there are also special substantive rights called mightiness or formative right, which are totally independent (see below).
- There are substantive rights concerning duties, which can yet be performed only voluntarily, but the other part of rights concerns such duties, which can be either voluntarily performed or claimed in a lawsuit and executed by enforcement procedures granted by State powers. This one is a special phase (or condition) of the substantive right called demand (Anspruch).

Rights can be acquired either with respect to other person’s already existing rights (derivative acquisition of rights) or regardless of these (original acquisition of rights). Derivative acquisition is called otherwise succession. There are two different types of succession:

- In case of a universal succession, a person’s every transferable asset as whole, is acquired by another person (i.e. successor) in a single momentum (e.g. inheritance).
- In the event of a singular succession, a person’s specific transferable asset or a defined group of transferable assets is acquired by another person (successor) also in a single momentum (assignment).

The acquisition of a right shall be seen as a process. The part of this process, which lasts until the very final point before the perfection of acquisition is called a pending legal situation. A reversion in rem (or otherwise an absolute reversion) is that kind of pending legal position, in which the acquisition of right has not yet become perfect but it also cannot be hindered or interrupted anyhow. The subject of the right in this phase of its acquisition is called reversioner.

While a reversioner cannot be hindered by others to acquire certain rights for him-/herself, a subject of mightiness (or that of a formative right) cannot be restrained from causing changes either in his/her legal
position and/or the legal situation of others by his/her own conduct or behaviour. Therefore, the subject of law entitled to a formative right can aim:

- either his/ her own legal position for acquiring rights (e.g. purchase options, cf. Section 6:225; occupation, cf. Section 5:52), for cancelling own rights (e.g. right for termination; dereliction), and for modifying own rights (e.g. the right to select one from more alternative services; Section 6:134);
- or other person’s legal position for acquiring rights for another person (e.g. right to sell; cf. Section 6:225), and for cancelling a right of another (via a counter-right or a counterclaim e.g. of limitation).

As we have seen, the content of private law relationships incorporates two components being in a co-dependent relation with each other: the substantial rights of private law plain called ‘rights’, and the substantial duties of private law simply called ‘private law duties’ or mentioned in a more artless way as ‘duties’. Private law duties are often identified with ‘obligations’. However, the technical notion of obligation means only those private law duties, which arise from relative private law relationships of the law of obligations. But, with respect to the fact that absolute private law relationships are to become relative ones because of their harm (see above), an in rem duty may indeed transform into an obligation.

The way of performance of private law duties is either voluntary or enforced by law. The major part thereof is legally—i.e. through State powers—enforceable. In the phase of legal enforceability of a private law duty, the subject of duty is not only bound (obliged) for the performance, but also liable for it.

The phase of being bound in a private law meaning (in German terminology called ‘Schuld’) is less strict and less oppressive than that of private law responsibility (i.e. liability; ‘Haftung’) which means that the bound party, in the case of non-performance, with respect to the contents of his/her liabilities, is oppressed by enforcement law to perform duty. There are also non-enforceable private law duties, these are called natural obligations, e.g. the claim for which has already been lapsed (cf. Section 23 § 1 of NHCC).

The main category of private law responsibility has two sub-divisions:

- The one legal situation is, wherein the subject of law is responsible fully or partially with his/her assets (accountability with assets or asset-liability). In private law, subjects of law are typically liable only with their assets (e.g. in the case either of damage or of breach of contract). There are two kinds of asset-liabilities:
  - As a rule, in private law positions, a person is fully accountable with his/her/its patrimony (i.e. with the total assets as whole). This kind of asset-liability is called unlimited liability.
  - Exceptionally, if law expressively orders, a person may also be liable partially, namely, with a certain, i.e. legally separated part of patrimony. This version is named as limited liability.
- The other legal position is, wherein the natural or legal is responsible with his/her/its personality. This is the legal situation of personal liability. For instance, a person may be liable with his/her/its own personality for giving a satisfaction as a compensation for immaterial damages [Section 2:51 § 1].

As we have seen, a demand is a special phase of a substantive right, which emerges when the bound party does not perform his/her duty perfectly. In this special phase of rights, thus in case of a demand, the content of the right and its counterpart, i.e. the content of the private law duty, is legally enforceable by means of State powers: either, typically, by judicial proceedings, or, exceptionally by public authorities or arbitration. The legal nature of demands is basically twofold:

- Demands arising from rights established by absolute private law relationships (typically by in rem legal relationships), are enforceable regardless of the duration of time since the emergence of the specific demand (i.e. since the non-performance of the right). These do not lapse by passage of time.
- Demands arising from rights established by relative private law relationships (typically by contracts or other obligations such as damages or unjust enrichments), are enforceable with respect to the duration of time passed since the emergence of the demand (e.g. the non-performance of the contract). These demands do lapse by passage of time, i.e. usually after 5 years of limitation period.

3. The major factors adjusting private law relationships are called legal facts, which are legally relevant matters of fact. Their significance with respect to legal relationships is based on the effects they cause in the legal position of a person through establishing, modifying, or terminating rights, duties, obligations, or legal enforcement possibilities. A certain combination of given legal facts shapes the facts of the case, which is to be tallied by the judge with the matters of fact of the norm (hypothesis) to be applied. Legal facts are hardly numerable.
The following classification of legal facts is based on a revised and actualised system elaborated by the older Hungarian dogmatic of private law.

- The one major category of legal facts is the main class of circumstances concerning human beings.
  - Its major sub-class contains the richly various phenomena of human behaviours, which can be further classified as follows:
    - **lawful behaviours**, which are to be systematised in the followings:
      - a so-called private act can be
        \[ \Rightarrow \text{either a legal act, which can either be a legal transaction—a legal act establishing, modifying, or terminating a substantive right—or a litigation—a legal act for the enforcement of substantive rights—} \]
        \[ \Rightarrow \text{or a so-called real act (in the meaning of the German notion of Realakt), i.e. a special human behaviour, the subject of which does not consciously intend to produce or obtain a certain legal consequence, although his/her behaviour as a legal fact does produce such by law (see for instance the case of occupation, which leads to acquisition of property irrespectively of intentions or cognition of the occupant); } \]
      - the so-called acts of public authorities shape the other part of lawful human behaviours, which are to be taken as the activity of a public body exercising State authority for applying the law (e.g. the court), and, as such, have effect on private law relationships through State power of compulsion (enforcement). These acts can have:
        \[ \Rightarrow \text{either a constitutive effect shaping directly the legal relationship through forming its content, e.g. the substantive rights,} \]
        \[ \Rightarrow \text{or a declarative effect, which merely declares the existence, the content, the lawfulness or, contrarily, the wrongfulness of a legal relationship.} \]
    - Generally speaking, there are, according to sane mind, lawful and unlawful human behaviours (see the latter below). However, between them, there is also an interesting transitional middle class of human behaviours that are neither lawful nor unlawful. This ‘grey zone’ contains those demeanours, which are not unlawful but are sanctioned somehow. The reason for this specific sanctioning lies in the behaviour’s character of being simultaneously not completely unlawful and not totally lawful either. Such is the behaviour through own personal negligence (Eigenverschulden). The aggrieved party is, for instance, obliged to damage control, prevention and mitigation of damages. Insofar this party breaches one of these obligations through a behaviour not reaching the standard of reasonable conduct, the tortfeasor’s liability for damages totally or partially passes to this one (cf. Section 6:525 § 1). As to the previous example, the so-called implicit conduct (estoppel is a related institution in English law). If so, the court may order the party to pay damages in full or in part whose wilful conduct has explicitly induced another bona fide person to act in a way from which damages have occurred to him/her without any fault or negligence of his/her own (see Section 6:587).

  - The afore mentioned third group of human behaviours contains unlawful otherwise wrongful behaviours. There are two ways to classify these legal facts.
    - At first, from the angle of the person carrying out the conduct:
      \[ \Rightarrow \text{objective wrongfulness: on the one hand, there are conducts, the unlawful character of which is independent of such qualities of the wrongful party as:} \]
      \[ \Rightarrow \text{consciousness: bad or good faith while acting,} \]
      \[ \Rightarrow \text{volition: intentionality or negligence as to the conduct,} \]
      \[ \Rightarrow \text{the lack of generally expected due diligence under the certain circumstances (cf. NHCC Section 1:4). Such unlawful behaviour is e.g. the breach of contract. It is contrary to law regardless of the defaulting party’s here enumerated circumstances, which, therefore, cannot take away any parties’ performance liability.} \]
    - subjective wrongfulness: on the other hand, there are demeanours, the unlawful attribute of which does depend on the circumstances mentioned above, i.e.:
      \[ \Rightarrow \text{consciousness: bad or good faith while acting, see e.g. wrongful possession (Ss. 5:9–12),} \]
volition: intentionality or negligence as to the conduct, see e.g. insurance companies’ right of exemption from payment obligation (cf. Section 6:464),
the lack of due diligence, see e.g. the tortfeasor’s liability while being unable to prove that the damaging action was fit to the standard of expected due diligence (6:519).

Secondly, from the viewpoint of persons who differ from the one carrying out the conduct
\[ \Rightarrow \text{absolute wrongfulness: such behaviours are unlawful towards everyone, e.g. private law delicts with respect to the general prohibition of injury) and} \]
\[ \Rightarrow \text{relative wrongfulness: these demeanours are unlawful towards legally defined certain persons (not against everyone); e.g. the lack of conformity which is unlawful merely towards the entitled party (creditor).} \]

The second main group of legal facts belonging to the major group of circumstances concerning human beings is the pile of non-behavioral human facts which can be classified as follows:

- an objective human circumstance is the collection of the person’s legally relevant standings which is named together as the ‘status’; such status-element may be e.g. the age, gender, residence, habitation, domicile, family law status, physical and mental health, disadvantageous financial and economic situation, foetal status, and moreover the fact of birth or death;
- subjective human circumstances are:
  - the human condition of consciousness:
    \[ \Rightarrow \text{a man of good faith does not have and must not have any knowledge about the fact that the apparent situation differs from the real one;} \]
    \[ \Rightarrow \text{a man of bad faith has or ought to have knowledge about the fact that the apparent situation differs from the real one;} \]
    \[ \Rightarrow \text{a man being in mistaken is wrong in connection with the factual truth of a circumstance, or has insufficient knowledge about the relevant facts of a circumstance;} \]
    \[ \Rightarrow \text{foreseeability: the legal expectation against a person to have knowledge about certain details of a future circumstance (cf. Sections 6:73, 6:142, 6:192, 6:245, 6:521, etc).} \]
  - the human standing of volition: such is e.g. the blame or fault of a human being, which is the volitional relationship between person and his/her own behaviour or its possible consequences, which can be
    \[ \Rightarrow \text{the will of the conduct’s outcome (intentionality),} \]
    \[ \Rightarrow \text{the acquiescence of the demeanour’s result by omitting the generally expected due diligence (negligence);} \]
  - the emotional state of a person, such as e.g. the forgiveness or the distrust otherwise the loss of confidence; these have legal relevance according to family law, law of succession (e.g. unworthiness to inherit), a fiduciary transaction (mandate, or fiduciary asset management), and gratuitous contracts (e.g. withholding and recovery of gifts).

The other major category of legal facts is the main class of circumstances being independent of human beings. It has two groups of elements:

- time and course or passage of time: the relevance of these facts emerges in connection e.g. with time limits, dates and periods, and the institutions of limitation and usucaption etc. (details see there);
- natural factors qualified as Acts of God (force majeure):
  - the circumstances being not under humans’ control is relevant according to contractual liability (6:142), agricultural services contract (6:255), contract of carriage (6:263, 266), exclusion of indemnification in agency contracts (6:299), damages caused by game animals (6:563);
  - malfunction in case of hazardous operations’ interactions (6:539);
  - inevitability or unavoidability in respect of liability for hazardous operations (6:535), damages caused by game animals (6:563).
NOCHTA, TIBOR

FUNDAMENTALS OF THE LAW OF PERSONS

Contents:

1. General Rules of Legal Persons

2. The Rules of Particular Legal Persons

   2.1. The Common Rules of Business Associations
   2.2. Specific Business Associations
   2.3. Cooperative Societies
   2.4. Groupings
   2.5. Associations
   2.6. Foundation
   2.7. State Involvement in Civil Relations

1. General Rules of Legal Persons

1. Legal capacity of legal persons. The Civil Code recognizes the legal persons beside humans as the subject of civil-law relationships, which means that in civil legal relations, subjective rights and obligations belong to them. All legal persons shall have legal capacity; they shall be entitled to have rights and obligations. The legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings. As opposed to humans the legal person has no capacity to act, however, their legal capacity is equivalent with that absolute legal capacity regard them in their external relations. Only humans have personality as well, legal person have not. The legal capacity of legal persons shall not cover all rights and obligations that inherently pertain solely to individual human beings. (the right for dignity, the right for honour, etc.) however several rights and obligations pertaining to humans are interpretable (right for name, right for good reputation, etc.) and to exercise these rights may also be important for a legal person.

2. Standardization requirement. Legal persons shall be founded in a legally determined standard organizational structure type: association; business associations; cooperative; union; foundation. The legal person shall be founded in a type defined by law; established and in the pursuit of any activity and purpose not prohibited by law, the constitution conflicting with these provisions shall be null and void (mandatory principle). The legal person must have its own name, registered office, assets separated from the founders and members, and an organization providing its management and representation.

3. Liability for the legal person’s debts. Legal person is an independent legal entity (stringent asset separation principle) it shall be liable for their debts with their own assets; members and founders of a legal person shall not be held liable for the legal person’s debts. In the event of abuse of limited liability on the part of any member or founder of a legal person, on account of which any outstanding creditors’ claims remain unsatisfied at the time of the legal person’s dissolution without succession, the member or founder in question shall be subject to unlimited liability for such debts. (Liability transfer principle)

4. Foundation. Legal person by means of a contract, charter document or articles of association, and shall themselves decide on the legal person’s organizational structure and operation arrangements (freedom of establishment).

<table>
<thead>
<tr>
<th>Partnership agreement</th>
<th>Charter document</th>
<th>Instrument of constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>- general partnership, (kkt.)</td>
<td>- Association</td>
<td>- Foundation</td>
</tr>
<tr>
<td>- limited partnership (bt.)</td>
<td>- Cooperative</td>
<td>- One person private limited-liability company (kft.)</td>
</tr>
<tr>
<td>- private limited-liability company (kft.)</td>
<td>- public limited company (nyrt.)</td>
<td>- One person Ltd.</td>
</tr>
<tr>
<td>- groupings</td>
<td>- private limited company (zrt.)</td>
<td></td>
</tr>
</tbody>
</table>
Based on the principle of claudication dispositive as regards relations between members and founders, and between them and the legal person, and as regards the organizational structure and operational arrangements of the legal person, in the instrument of constitution the members and founders may derogate from the provisions of legal persons of the Civil Code. This dispositive freedom is limited, and may not derogate from the provisions:
- if it is precluded by law; or
- where any derogation clearly violates the interests of the legal person’s creditors, employees and minority members,
- or it is likely to prevent the exercise of effective supervision over legal persons.

Legal persons shall enter into existence upon registration by the court based on the instrument of constitution made out for the type of legal person in question. The court of registry may refuse to register a legal person on grounds specified by the relevant legislation. Legal persons are established for a definite or indefinite period. If the instrument of constitution does not provide for the term of the legal person, the legal person come into existence for an indefinite duration.

5. Mandatory layout of the instrument of constitution:
- the founders’ intent to set up the legal person
- the legal person’s name, registered office, purpose and main activity;
- The names of the founders of the legal person, including their home address or registered office;
- The capital contributions prescribed, the value of such contributions, as well as how and when such assets are to be made available; and
- The legal person’s chief executive officer.

6. Obligation of capital contribution. Founders and members of legal persons are required to provide capital contribution to the legal person at the time of foundation and in cases where membership rights are otherwise acquired. Capital contributions made available to legal persons are not recoverable, and equivalent compensation may not be demanded. The reason for this is the stringent asset separation principle. The capital contribution may be based on legal person type:

<table>
<thead>
<tr>
<th>Capital</th>
<th>Equity capital</th>
<th>Assets contribution</th>
<th>Asset deposit</th>
<th>Cooperative assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>limited company (rt.)</td>
<td>- private limited-liability company (kft.) - charitable corporations</td>
<td>- groupings - general partnership (kft.) - joint ventures - other organizations</td>
<td>limited partnership (bt.)</td>
<td>cooperative</td>
</tr>
</tbody>
</table>

7. Form and value of capital contributions. The capital contribution required from members and founders may be provided to the legal person in the form of cash or in the form of consideration other than in cash. The founder or member may provide asset contribution by transferring ownership rights of tangible or intangible assets to the legal person. If, at the time of transfer, the value of asset contribution does not reach the value indicated in the instrument of constitution, the legal person may demand payment of the difference from the person having provided the asset contribution within five years from the date of transfer. (liability for contribution in kind)

8. Registration of legal persons. An application for the registration of a newly established legal person shall be submitted by the person appointed to represent the legal person, thus not the founder or constitutor, who may conflict with the legal person. The representative shall be held liable towards the founders for damages resulting from his failure to submit the application in due time, also if the notification submitted is incomplete or deficient, in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation. The provisions on the nullity of contracts shall apply to the nullity of the instruments of constitution of legal persons insofar as the resolution on the registration of the legal person becomes final and enforceable. After the registration of a legal person by binding decision, nullity of the instruments of constitution of the legal person may not be cited as grounds for removal from the registry.

9. Organizational structure of legal person. The legal person’s organizational structure can be divided into three levels:
- Decision-making body
- Management
- Supervision

a. Decision-making body. Members and founders shall exercise their decision-making powers in a body comprised of all members and founders or of delegates selected by the members with taking decisions in session or out of session. In the meeting of the decision-making body a quorum shall exist when more than one half of the members with voting right are present. Quorum shall be considered for each decision.

b. Decisions that are related to the governance of a legal person and are beyond the competence of the members or founders, shall be adopted by one or more executive officers or by a body consisting of executive officers. (management of legal person) Thus, it is difficult to identify the specific issues which are the management’s competence.

The Civil Code calls every manager of the legal person as executive officer. This means special liability status: The executive officer shall be held liable for damages caused to the legal person resulting from his management activities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation. Executive officers shall perform their management functions representing the legal person’s interests. Executive officers shall take effect when accepted by the person delegated, elected or appointed.

c. Supervision of legal persons on behalf of the owners. Members-or in case of no members- founders may supervise management in order to protect the interests of the legal person. Members or founders may provide the supervisory function or can create a supervisory board dedicated to supervision of legal persons on behalf of the owners. The law specifically orders in some business organizations (public limited company (nyrt.) private limited company (zrt.)) the establishment of supervisory board. The supervisory tasks shall be done expeditious in accordance with social, economic and legal criteria. Members of the supervisory board shall be held liable for damages caused to the legal person resulting from their omission of supervisory responsibilities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

10. Representation of Legal Person. In order to the legal person to be able to participate in the business traffic relies on the representation of a natural person:

- Legal representation is implemented if the representation is without any special activity, statement belongs to a person based on the law. The responsibility for providing legal representation of legal persons lies with the executive officer.
- If the legal person’s instrument of constitution or its internal policy relating to the organization and functioning of the legal person provides for an office vested with power of representation. (organizational representation)
- In specific cases management may delegate powers of representation.

Any restriction of the power of representation vested upon the legal person’s authorized representative shown in the registry of legal persons or rendering such representative’s actions conditional or subject to approval shall not be effective as against third parties, except if the third party knew, or should have known about the restriction or about the condition or approval requirement, and the lack thereof.

11. Safeguards for the lawful operations. Judicial oversight of legal persons shall in general be carried out by the competent court of registry. Judicial oversight shall not apply to cases that are normally subject to other court or administrative proceedings. The scope of judicial oversight shall not cover the business decisions of legal persons in terms of economic feasibility and efficiency.

The juridical review of the decisions of the legal person is not aimed at the replacement of organizational decision-making with juridical opinion, but to be used if the resolution is alleged to be unlawful or to violate the instrument of constitution. The judicial decree shall not replace the legal person’s business decisions, however, it may be necessary for the court to order a new decision of the appropriate body of the legal person, and the law grants this possibility to the court. Members of the legal person, or the founders (in the case of non-membership) legal persons shall be entitled to bring court action seeking annulment of resolutions.

The statutory auditor audits the financial-accounting activity according to legality (from the outside) to ensure protection of the public interest. This audit activity shall not cover the business decisions in terms of economic feasibility and efficiency. Should the statutory auditor detect any changes in the legal person’s assets that are
likely to jeopardize its ability to satisfy any claims filed against the legal person, or learn of any circumstance which entails the liability of the executive officers or supervisory board members with respect to their activities performed in that capacity, he shall forthwith request management to take immediate action to the extent required for enabling the members—or the persons exercising founder’s rights in the case of non-membership legal persons—to take the necessary decisions. In the event of non-compliance with his request, the auditor shall inform the court of registry exercising judicial oversight over the legal person concerning the situation at hand.

12. The transformation of legal person. According to the Civil Code transformation is the process of changing the legal person’s type, which means, that the legal person undergoing transformation will be dissolved, and its rights and responsibilities shall be transferred to the legal person established by way of the transformation, as the general legal successor. As the transformation means the establishment of a new legal person in every case, that shall be registered, and the rules of foundation shall be applied to the transformation as well, namely the foundation rules of the specific type of the new legal person. Restrictions of transformation: The Civil Code does not allow transformation, if:

- undergoing dissolution without succession or bankruptcy proceedings;
- indicted in criminal proceedings carrying possible criminal sanctions, or if subject to any criminal sanctions
- the members or founders fail to provide the capital contribution prescribed in the instrument of constitution.

The decision on going into transformation, is an essential matter affecting the status of the legal person, so it cannot belong to the decision-making of the executive body, lies with the members or founders of the legal person, according to the legal rules. The transformation of a legal person may change the system of settlement obligations for the legal person’s debts or modify the assets available to a legal person and therefore seriously affect the interests of the creditors of the legal person.

Since the transformation necessarily means the termination of a legal person and the creation of a new legal person, both of which are subject to entry in the Register of Legal Persons.

Merger of legal persons: A legal person may combine with other legal persons as one legal entity by way of merger or acquisition. In the case of merger, the merging legal persons are terminated, and a new legal person is established by way of universal succession. In the case of merger by acquisition, the acquired legal person is terminated and all its assets and liabilities are transferred to the acquiring legal person by way of universal succession. Even different legal person types can merge with each other.

Demerger: Demerger means when a legal person is split into two or more legal persons by way of division or separation. Division means the operation whereby, after being terminated, a legal person transfers all its assets to more than one legal person. In the case of separation, the legal person shall continue to operate in its previous form and part of its assets are transferred to the successor legal person established by the separation.

13. Dissolution of legal persons without succession. A legal person shall terminate without succession if:

- it was established for a fixed duration, and such period of time expires;
- it was subject to termination upon a certain condition, when this condition is met;
- declared terminated by its members or founders; or
- terminated by a body so authorized
- provided in all cases that the legal person is cancelled from the registry following completion of the appropriate procedure for the settlement of the legal person’s financial affairs. The choice of the procedure depends on the legal entity’s solvency, or insolvency
  - if the legal person’s assets exceed the claims rate, it is solvent, then the voluntary liquidation proceedings take place.
  - The commercial court orders compulsory liquidation, if:
    - the company is declared terminated,
    - the company did not finish the voluntary liquidation within three years, and did not submitted for cancellation
    - a cause for the company’s termination without a legal successor occurred and there is no place for liquidation
o the legal person is insolvent, if the claims rate is higher than its own property. In case of the insolvency of a legal person without legal successor the liquidation procedure takes place. The members and founders of the terminated legal person without legal successor are liable for the unsatisfied claims of the legal person until the limits of their rate of share.

o From the three procedures discussed above the bankruptcy proceedings is distinct, during which the debtor’s - in order to conclude a bankruptcy settlement - receives a delay in pay and attempts an agreement with creditors.

o If after the removal from the register, there is property owned by the legal person, which status is not settled, property settlement procedure shall be conducted.

14. The basic terms of group of corporation law: Recognized group of corporations means a form of cooperation featuring a common business strategy between at least one dominant member that is required to draw up consolidated annual accounts and at least three members controlled by the dominant member under a control contract. A group of corporations may consist of limited companies, private limited-liability companies, associations and cooperatives. The control contract lays down the common business strategy for a corporate group. If the conditions for the control contract prevail for at least three consecutive years, at the request of either of the parties with legal interest the court may order the de facto dominant member and the controlled companies to conclude the control contract and to apply to the court of registry for the registration of the group of corporations.

2. The RULES OF PARTICULAR LEGAL PERSONS

2.1. The Common Rules of Business Associations

1. Concept. Business associations are legal persons established for the pursuit of business operations with financial contribution provided by its members, where each member has a right to a share of the profit and an obligation to participate in covering the losses. The four elements according to this:

- the pursuit of business operations
- financial contribution provided by its members
- business organization with legal personality
- share of the profit and an obligation to participate in covering the losses.

- At least two members is compulsory for all business associations except for private limited-liability company and limited company

2. Company form cogency. According to the international practice a business association may operate - according to the Civil Code- in the form of:

- general partnership,
- limited partnership,
- private limited-liability company or
- limited company.

This rule is cogent, there is no possibility for the association to be founded in other form.

3. Asset contribution. If a member fails to provide his contribution as undertaken in the instrument of constitution by the prescribed time limit, management shall call upon such member, to provide the contribution within thirty days, with the applicable consequences indicated:

- the membership of the member shall be terminated
- shall be held liable for damages for loss caused by non-performance of an obligation.

4. Company Register. Since all business organization receives its legal personality, at the moment of registering in the Company Register, the formation of a business association shall be notified to the court of registry within thirty days from the date when the instrument of constitution is executed in a notarized document or countersigned by a lawyer or bar association legal counsel.

5. Pre-company. As of the date when the instrument of constitution is executed in a notarized document or countersigned by a lawyer or bar association legal counsel, the business association may operate as the pre-company of the business association.
6. **Exclusion of members.** One instance for ground of exclusion of a member is by court ruling based on a claim launched by the business association against such member. The proceedings may go forward if the continued membership of the person in question would seriously jeopardize the business association’s objective.

7. **Organizational structure of business associations.** The supreme body functions as the decision-making organ of the members of the business association, is conducted by the management of the senior officials. The executive tasks are the representation, the optimal division of labour and design of structure, the regulation of operation, ensuring the existence of pre-conditions of operation, the execution of the tasks and the organization of the processes, control activity, organizational development and making the association suitable for the changing conditions.

According to the Civil Code executive management means all the decisions necessary in connection with the company’s management, which according to the law or constitution of the association does not belong to other corporate body. The executive officer performs the management of the company on the base of the priority of the interests of the business association, performs his duties only in person, according to the agreement with the association under a personal service contract or under a contract of employment.

8. **The direction of the executive officer’s liability.** The executive officer’s liability is bidirectional: on the one hand, it exists towards the association and members contractual, on the other hand towards third persons delict.

2.2. **Specific Business Associations**

1. A general partnership (közkereseti társaság or kkt.) is an association with legal personality which the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and to undertake joint and several liability for the partnership’s obligations not covered by the assets of the partnership. Creditors’ claims against members shall be covered to the extent of the partner’s share from the partnership’s assets, which is due upon the termination of his membership. If a creditor files to have this share attached, he shall be entitled to exercise the member’s right of withdrawal and, as a result, shall be entitled to demand compensation from that member’s share. The termination of the membership can happen for various reasons:
   - upon mutual agreement of the members;
   - upon withdrawal of the member;
   - upon transfer of partnership share;
   - upon death or dissolution of the member;
   - upon the occurrence of any grounds for exclusion or any reason giving cause to conflict of interest.

2. By virtue of the memorandum of association for the establishment of a limited partnership (betéti társaság or bt.), the members of the partnership agree to make available to the partnership the capital contribution necessary for its activities, and at least one of the partners, the general partner undertake joint and several liability together with the other general partners for the partnership’s obligations not covered by the assets of the partnership, while at least one other partner, the limited partner is not liable for the obligations of the partnership, unless this law provides otherwise.

3. Private limited-liability companies (korlátolt felelősségű társaság or kft.) are business associations founded with an initial capital consisting of capital contributions of a predetermined amount, in the case of which the liability of members to the company extends only to the provision of their initial contributions, and to other contributions set out in the memorandum of association. Unless otherwise provided by law, members shall not bear liability for the company’s obligations.

The capital contribution of members is provided in the form of core deposits. The capital contributions of members may differ in terms of value, however, the amount of each contribution may not be less than one hundred thousand forints (which shall consist of cash or non-cash assets). Each member shall have one core deposit, several persons have agreed to provide a core deposit collectively, their liability for providing such core deposit shall be joint and several. The core deposits together comprise the initial capital, which may not be less than three million forints. Business share means the whole of rights and obligations arising in connection with the core deposit. Business shares shall come to existence upon the company’s registration, the business shares of members shall be consistent with
their respective capital contributions. Business shares may be freely transferred among the members of the company and to third persons limited, only if the member concerned has paid up his capital contribution in full. In special conditions if a member is excluded from the company by order of the court, or if membership is terminated due to the member’s failure to provide the capital contribution or supplementary payment, the business share of such member must be disposed of.

Supplementary payments. If the memorandum of association contains provisions to authorize the members’ meeting to order an obligation upon the members to provide supplementary capital contributions in order to cover losses, the maximum amount payable by members on that basis, as well as the frequency of performing supplementary capital contributions shall be specified. The supreme body of a private limited-liability company is the members’ meeting, the owners’ deliberation and decision-making body. The management of a company shall be provided for by one or more managing directors. If a company has more than one managing directors, they shall be entitled to handle management issues independently, with the proviso that they are entitled to raise an objection against the planned or executed actions of any other managing director.

The increase or reduction of initial capital. In many cases, the original capital is not sufficient for the activity, in that case the initial capital can be increased. the capital raising in two ways new strain deposits with the performance or equity over assets expense. The increase of capital may be made through two ways: through additional financial contributions, or capital increase from assets in excess of the initial capital.

4. Limited companies (rizsénytársaság) are business associations founded with a share capital consisting of shares of a predetermined number and nominal value, where the obligation of shareholders to the limited company extends to the provision of funds covering the nominal value or the accounting par value of shares. Shareholders shall not be held liable - unless otherwise provided for in the law- for the limited company’s obligations. The structure of limited companies: general meeting, management, supervisory board, audit committee, auditor. Limited companies can operate in two types: Any limited company whose shares are listed on a stock exchange shall be recognized as a public limited company (nyrt). Any limited company whose shares are not listed on any stock exchange shall be recognized as a private limited company (zrt).

Shares are equity securities representing membership rights in the issuing limited company, they are registered, have a nominal value, and are tradable. According to the Civil Code five types of share can be emitted: ordinary shares, preference shares, employee shares, interest-bearing shares; redeemable shares.

The capital. The limited company is a company with share capital, the capital of the limited company is the nominal value of all shares, which cannot be less than 5 000 000 Forint in case of private and cannot be less than 20 000 000 Ft in case of public limited companies. The share capital may be increased:

- through the issue of new shares
- from the assets not forming part of the share capital
- through the issue of employee shares
- through the conversion of convertible bonds.

2.3. Cooperative Societies

A cooperative society (szövetkezet) is a legal person established with a capital made up of the members’ contributions; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members so as to satisfy their economic and societal needs, where the obligation of its members toward the cooperative society covers the provision of capital contribution and their personal involvement as provided for in its statutes. Members shall not bear liability for the cooperative society’s obligations. The activities of cooperative societies may include sales, purchases, production and services. The possible organizational structure units: general meeting, section meeting, college of delegates, administrative body, executive officer, supervisory body, auditor.

2.4. Groupings

A grouping (egyesülés) is a cooperative association with legal personality, founded by its members in order to improve the efficiency of their financial management, to coordinate their economic activities, and to represent their professional interests.
The purpose of a grouping is not to make profits for itself; its members shall bear unlimited, joint and several liability for debts exceeding the grouping’s assets. A grouping may also pursue other service and joint economic activities (economic auxiliary activities) in support of its coordination duties. The common provisions relating to business associations shall apply to groupings.

2.5. Associations

Based on the organizing principle of private law (freedom of organization) Persons can associate freely to achieve their common objectives, associations may be formed to perform economic activities only if they are directly related to the achievement of the association’s goals, with the limitation that associations shall use their assets in accordance with their objective (they shall not be entitled to distribute their assets among their members, not for-profit organization) and may not pay dividends to their members. According to the Civil Code, associations are legal persons with registered members, created for the purposes defined in their statutes in order to achieve their common objectives on a continuous basis.

An association shall be considered established upon the adoption of its statutes, for which the unanimous declaration of intent of at least 10 persons (natural or legal) is required. Legal personality may be conferred by the statutes upon a department of the association.

Association has registered membership. Membership in the association shall commence at the time of foundation upon the registration of the association, after the application for admission are accepted by the general meeting. The members of an association shall be entitled to partake in the association’s activities, and shall have equal rights and obligations, except where the statutes provide for membership of special legal status. Members shall exercise their membership rights in person, unless permitted by the statutes, members can exercise their membership rights by way of proxy. Membership rights are non-tradable, and cannot be inherited. The member:

- shall fulfil the obligations prescribed for members in the statutes.
- shall not jeopardize the objectives of the association and the activities of the association.
- beyond paying the membership fee shall not be responsible for the liabilities of the association with their own assets.

The termination of membership: Members shall be able to terminate their membership at any time, by means of written notice addressed to the association’s representative, without giving any reason. According to the provisions of the Civil Code, if membership is rendered subject to certain conditions set out in the statutes, and the member fails to meet such conditions, the association shall have the right to cancel the membership in writing subject to a thirty-day notice period. Exclusion: If the exclusion is based on seriously or repeatedly infringing the statutes of the association, guarantees for the conduct of a fair hearing shall be provided. Bodies of association: General meeting, (the association’s decision-making body) college of delegates, (assess constitution) management, supervisory board (must be established if there are more than one hundred members).

2.6. Foundation

Foundations (alapítvány) are legal persons set up to pursue the long-term objective defined in the charter document. The founder shall define in the charter document the funds made available to the foundation and the organizational structure of the foundation. Differentiation of foundation and association:

<table>
<thead>
<tr>
<th>Foundation</th>
<th>Association</th>
</tr>
</thead>
<tbody>
<tr>
<td>conglomeration type legal person (funds made available for the objective)</td>
<td>person aggregation type legal person (personal activity is united)</td>
</tr>
<tr>
<td>independent from founder</td>
<td>counts on the members in the course of operation</td>
</tr>
<tr>
<td>pursue the objective defined in the charter document</td>
<td>pursue the interest of its members</td>
</tr>
</tbody>
</table>
Setting up a foundation is by a one-sided written donation in which the founder required to define the foundation’s purpose, organization, and the trust fund, and all other issues the general rules of the contract law applies. The Civil Code allows the setting up of foundation for private purposes, but foundations are authorized to perform economic activities only if they are directly connected to the achievement of the foundation’s goals. Foundations may not be a partner with unlimited liability in another legal entity, may not set up another foundation, and may not join another foundation.

A foundation may be set up by natural or legal persons or several persons jointly. Any amendment of the charter document aiming to alter the foundation’s purpose shall be considered annulled, except if the foundation has fulfilled its purpose, or if achieving the foundation’s objective is no longer possible and the foundation has enough funds for its new objective.

Joining: A foundation may accept new members upon the contribution of funds, subject to the conditions set out in the charter document.

The founder and new members may not appropriate the foundation’s assets for other purposes and may not demand to recover such assets; any provision of the charter document to the contrary shall be null and void.

The beneficiary: Financial benefits may be provided from the foundation’s assets, consistent with the foundation’s objectives, to persons designated as beneficiaries in the charter document, or in the absence of such instruction, by the appropriate foundation organ: it may be a specific person or a range of beneficiaries.

Board of trustees: The board of trustees functions as the foundation’s managing body. Members of the board of trustees are the executive officers of the foundation. The board is comprised of three natural persons, at least two of which shall be residents of Hungary. No beneficiary of the foundation or his close relative may hold a seat on the board. Any provision of the charter document to the contrary shall be null and void. The members may be appointed or elected for fixed-term or indefinitely.

A foundation may not be transformed to another type of legal person. A foundation may merge only with another foundation or may be divided into foundations only. A foundation shall cease to exist if:

- the foundation has fulfilled its purpose, and a new objective has not been determined;
- fulfilment of the foundation’s purpose is no longer possible, and revisiting the objective or merging with another foundation cannot be done; or
- the foundation is not pursuing any activity with a view to fulfilling its goal for a period of three years.
- The founder shall not have the right to dissolve the foundation.

Assets of the foundation after dissolution without succession:

- shall be given to the person so designated in the charter document
- Upon the foundation’s dissolution without succession, the founder may dispose of the assets he has provided for the benefit of another foundation or an association having the same or similar objective, if the charter document fails to provide for the appropriation of the assets in such cases, or if such provision cannot be executed.
- The court of registry shall assign the assets to an organization designated by law, if the charter document or the founder does not provide for the assets of the dissolved foundation, or if the person designated in the charter document, or the foundation, association the founder has designated refuses to accept it, or cannot acquire it.

2.7. State Involvement in Civil Relations

1. The Civil Code declares the legal personality of The State, recognizes its general legal capacity. The State can be subject of civil relations in multiple ways:

- Through specific offices (e.g.: Parliament, ministries)
- Through organization it has founded (these are typically the budgetary organs)
- Through companies operating with the participation of State
- Finally, exceptionally, the state itself as whole can act in private law, although the latter is exceptional in nature (e.g.: succession by the State of necessity)
2. The State accorded of absolute legal capacity.

3. The State and legal persons being part of general government shall remain liable for their obligations arising out of or in connection with civil relations even in the absence of budgetary appropriations.

4. The State does not have unrestricted autonomy in terms of its financial affairs, it cannot freely dispose of its assets. The State’s assets may only be provided under the current budgetary rules: during the implementation of the budget the state’s finances subsystem in the current year’s obligation to pay only to the extent of the approved expenditure appropriations.

For the implementation of the central budget investments, The State, according to the above rules, moves directly to civil relations. The jurisprudence achievement of those proposition to say that The State, as the owner manage the owned property, resulting of the ownership nature its legal personality (de iure gestionis), however, separated from the exercise of public authority functions (de iure imperii), since it is not a matter of civil relation but in a public legal relationship with a person.

5. The State in civil relations is equal with the other subjects of law. The minister vested with powers to oversee State property shall represent the State in civil relations.
FUNDAMENTALS OF LAW OF RIGHTS IN REM

Contents:

1. General Part
   1.1. The Doctrine of Norms of the 'Law of Rights In Rem'
       1.1.1. Origin and Characteristics of Basic Notions and Concepts
       1.1.2. Principles and Regulatory Structure
   1.2. The Doctrine of In Rem Legal Relationships
       1.2.1. The Content Thereof and the Genres of Rights in Rem
       1.2.2. The Objects Thereof, the Estate, and the Assets
       1.2.3. The Subjects Thereof

2. Special Part
   2.1. The Law of Possession
       2.1.1. Basic Notions Thereof
       2.1.2. Acquisition and Loss of Possession
       2.1.3. Protection of Possession
       2.1.4. Wrongful Possession
   2.2. The Law of Ownership Rights
       2.2.1. Basic Notions Thereof
       2.2.2. The Content of Ownership
           2.2.2.1. The Right to Possess, Use, Utilise and Fructify, and the Restrictions Thereof
           2.2.2.2. The Right of Disposition and Its Restrictions
       2.2.3. The Protection of Ownership
       2.2.4. The Different Modes of Ownership Acquisition
           2.2.4.1. The Original Modes Thereof
           2.2.4.2. The Derivative Modes Thereof
       2.2.5. The Joint Ownership and the Condominium
           2.2.5.1. Joint Ownership and Legal Relationships of Joint Owners
           2.2.5.2. The Condominium
   2.3. The Law of Limited Rights In Rem
       2.3.1. The Law of In Rem Security Rights over Assets
           2.3.1.1. The Legal Nature Thereof
           2.3.1.2. Collateral and Independent Types Thereof
           2.3.1.3. The Process of Formation Thereof
           2.3.1.4. Contracts on Establishing an In Rem Security Right
           2.3.1.5. Parties’ Rights and Obligations before Satisfaction
           2.3.1.6. The Claims Guaranteed Thereby
           2.3.1.7. The Objects Thereof
           2.3.1.8. The Rankings Thereof According to Registration
           2.3.1.9. The Enforcement Thereof: Exercising the Right to Satisfaction
           2.3.1.10. The Termination Thereof
       2.3.2. The Law of Rights of Use
           2.3.2.1. Diverse Types of Beneficial Interests (Usufructs)
           2.3.2.2. Land Easements (Predial Servitudes)
           2.3.2.3. Other Rights of Use
   2.4. The Law of Public Registers of Rights In Rem
       2.4.1. The Real Estate Register: Basic Notions and Principles
2.4.1.1. The Legal Regulation and Definition Thereof
2.4.1.2. The Legal Nature Thereof
2.4.1.3. The Basic Principles Thereof
2.4.2. The Collateral Register

1. GENERAL PART

1.1. The Doctrine of Norms of the ‘Law of Rights In Rem’

1.1.1. Origin and Characteristics of Basic Notions and Concepts

The law of rights in rem together with its core issue called ‘rights in rem’ is a special notion of the continental systems of private law. This specific term is based on the idea of iura in re (parallel to the concept of ‘proprietary rights’) elaborated by the 12th–13th century Italian Glossators. Therefore, it is nearly untranslatable into the Anglo-Saxon legal terminology.

Hugo Grotius, the most remarkable Dutch jurist of the 17th century Natural Law, defined the notion as ‘facultas homini competens sine respectu ad certam personam’. This Latin phrase was, to a greater or lesser extent, translated into English in the famous work headed ‘Jurisprudence’ of John Austin—a noted English legal theorist of the 19th century—as ‘rights residing in persons and availing against other persons generally’. The definition is parallel to that of the so-called ‘absolute rights’ (equivalent of rights in rem) defined e.g. by Bernhard Windscheid in his 19th century ‘Pandekten’ as rights ‘which avail against all persons’.

Therefore, the law of rights in rem—which observably is a static field of law as compared to the law of obligations being a rather dynamic phenomenon—is a specific and autonomous field of private law regulating those absolute rights, which entitle what kinds of assets and how can be acquired, retained, used, exploited, fructified, alienated, transferred, encumbered by each subjects of law (natural or legal persons). These absolute rights in rem entitle to such possibilities to act as e.g. to acquire, to exploit or to transfer a right. These absolute rights guaranteed by the law of rights in rem are otherwise called potestative rights, which generate and provide a legally assured power of different kinds of extent in valuable and marketable assets, which can be either things (tangible properties) or rights or alternatively claims (cf. NHCC Section 8:1 § 1 point 5). The total proprietary status of all subjects of law is legally determinable and characterizable through the very regulations of the law of rights in rem. Within this scope, law of rights in rem answers the questions of:

- Which assets can be subjected to the rule of a subject of law at all?
- Which assets among these subdued ones can be subjected to the power either of individuals or of groups being on the different levels of organization?
- Which kinds of proprietary statuses either of individuals or of groups can be formed due to the rules mentioned above?
- What types of relationship can emerge between the diverse proprietary statuses said before?
- What is the legal content of these proprietary statuses otherwise what kinds of rights and duties do these proprietary statuses consist of?

According to these, through private law tools, the law of rights in rem regulates the distribution of wealth among economic operators, whether they are individuals or groups. Diverse socio-economic models governed by its rules take their place on a scale defined by the extrema of total individualism and total collectivism. These politico-legal ideologies profoundly govern the proportion of private and public property in a specific society and its economy.

1.1.2. Principles and Regulatory Structure

With respect to the aforesaid characteristics of the law of rights in rem, the life conditions regulated by this field of law are, as a matter of course, issues of enormous social, economic, constitutional and political importance. Therefore, in the whole scope of the law of rights in rem, the general principle of enhanced protection dominates, according to which:
Several rules of this field of law belong to the branch of constitutional law, because some of the issues regulated by it—such as the freedom of property or the principle of property protection—call for a regulation of highest rank in the hierarchy of norms, since these profoundly determine the relationships between public and private interest. The Fundamental Law of Hungary says that “every person shall have the right to property and inheritance”, anyway “property shall entail social responsibility”; “property may only be expropriated in exceptional cases and in the public interest, in legally defined cases and ways, and subject to full, unconditional and immediate indemnity” (Art. XIII §§ 1–2).

The utmost part of its norms is mandatory, thus dispositional norms are very exceptional, and occur only if it is expressly permitted by law (see e.g. NHCC Section 5:18 § 1 The property of a building shall accrue to the owner of the land, which it was built up on, unless there is an agreement between the parties to the contrary). This is also echoing in several principles of the law of in rem rights:

• Subjects of law neither can establish other genres of in rem rights than those which are named by law (Principle of Exclusiveness),
• nor can define the legal substance of an already named in rem right otherwise than it was settled by law (Principle of Substance Limitation).
• The object of an in rem right shall always be certain and properly defined (Principle of Specification otherwise Principle of Uniqueness).

The legal relationships based on the law of rights in rem are absolute private law relationships, therefore only the entitled party is certain, and all other persons are obliged to acknowledge, to tolerate and not to violate this party’s rights (Principle of Absoluteness).

Transparency shall also be applied according to these legal relationships (Principle of Transparent Openness). It is assured and guaranteed by public registers (e.g. Real Estate Register, Collateral Register, Ship Register, Aircraft Register) which authentically contain the relevant data

• of former and recent entitled persons,
• of the object of the certain right,
• of the certain right’s contents, temporal extent and establishment.

The codified private law fundament of the law of rights in rem lies in the 187 sections of the Fifth Book of NHCC, which is composed of four parts:

• Part One contains the Law of Possession (Sections 1–12),
• Part Two implies the Law of Ownership (Sections 13–85),
• Part Three rules the Law of Limited Rights In Rem (Sections 86–164),
• Part Four governs the Real Estate Register (Sections 165–187).

1.2. The Doctrine of In Rem Legal Relationships

1.2.1. The Content Thereof, and the Genres of Rights in Rem

1. The notional construction of ‘in rem legal relationship’ is an abbreviated wording of ‘legal relationship of the law of rights in rem’. Both have identical conceptual content and the same meaning.

Considering the above drafted bases of the General Part of Hungarian Private Law and with respect to the structure of private law relationships, there are relative and absolute private law relationships. The legal relationship is relative if every subjects of the relationship are certain (defined), however, since only up to one subject is certain, the legal relationship is a so-called absolute one in its structure. In absolute legal relationships, the entitled party is certain, therefore, the other subject standing on the opposite side of the relationship is theoretically an uncertain mass of people. Legal relationships arising from obligations—such as contracts, unjust enrichment or torts—are generally relative. Legal relationships based on the law of rights in rem are usually absolute private law relationships, where solely the entitled party is defined, and all other persons are obliged to acknowledge this party’s rights, and to tolerate the exercise of these rights, and to desist from violating the entitled party while exercising his/her rights.
An absolute legal relationship transforms into relative, if a certain person of the faceless mass of people standing in the obliged side of the relationship wrongfully acts and hurts the position of the entitled party. The infringement of the obligation of acknowledgement, tolerance, and desistance creates an obligation—a relative legal relationship—between the infringed (injured) party and the infringer (injurer) party for the desistance of infringement and for the compensation of disadvantageous consequences of the harm.

The so-called content of a private law relationship incorporates the parties’ rights and duties. It is truly simple to depict the content of the obliged side of in rem legal relationships, since this uncertain mass of people is obliged to acknowledgement, to tolerance, and to desistance. The opposite side’s situation—i.e. the rights and duties of the entitled party—is much more complicated.

Since in rem legal relationships are various and colourful, in rem rights are not less manifold and diverse, too. By nature, such multifarious rights are combined with variegated duties, restrictions, and limitations based either on public or on private law norms. For the purpose of a proper overview, it is indispensable to draft the variable classifications of genres of in rem rights.

2. Diverse genres of in rem rights arising from manifold types of absolute legal relationships have some common characters as well, which are e.g.

- These are mainly so-called exclusive rights (otherwise rights to exclude) granting the exclusion of others from the enjoyment of that specific right. The notion being parallel to the concept of ‘exclusive rights’ is the idea of ‘claim rights’ (rights to claim). These emerge generally from relative private law relationships (see detailed in the General Part above).
- Demands arising from in rem rights, are free of limitation, i.e. that these are enforceable regardless of the duration of time since the emergence of the specific demand, and do not lapse by the passage of time.

Diversified in rem rights are properly describable through the various classifications of their genres in the base of characteristic attributes. Many of these different categories have wide overlaps and common parameters.

a) In rem rights are nominated and classified by the Civil Code itself. This partition deserves to be the first one to draw up, since a principle of law of rights in rem says that persons cannot establish other genres of in rem rights than the legally nominated ones (principle of exclusiveness).

The Civil Code categorizes and denominates the in rem rights as follows:

- Ownership Rights are those in rem rights, which allow and entitle the owner to possess, to use, to exploit and to dispose his/her/its own property. The Right of Ownership incorporates the following particle rights:
  - the Right of Possession,
  - the Right of Use,
  - the Right of Utilization (viz. of exploitation, and fructification),
  - the Right of Disposition having two subcategories such as
    - the Right of Alienation and
    - the Right of Encumbrance,
  - and nonetheless there is the Right of Protection,
- The other main category contains the Limited Rights In Rem, which can be sub-classified as follows:
  - The Law of In Rem Security Rights over Assets that contains the manifold types of Pledges, Liens, Mortgages, Hypothecations etc., among which Civil Code names the followings:
    - Statutory Lien (i.e. a lien based on law),
    - Collateral Security (Security Deposit),
    - Possessor Lien (Pledge),
    - Non-Possessor Lien (i.e. Mortgage),
    - Independent Lien,
    - Lien on Rights (Hypothecation of Rights),
    - Lien on Claims (Hypothecation of Claims),
    - Lien on Set of Assets Identified by Detailed Circumscription (Lien on a Defined Part of a person’s Estate),
    - Multiple Pledges.
• The diverse subgenres of the Rights of Use. The notion of Rights of Use is a Pluralis Tantum, i.e. a noun, which exclusively has the Plural form. This notion is therefore not equal with the concept of the Right of Use used in Singular, which is a particle right of the Right of Ownership (see above). However, “Use Right” is a third autonomous form of right meaning a subgenre of the Rights of Use (see below). The different subgenres of the Rights of Use are then the followings:
  • Land Use Right,
  • Beneficial Interest (otherwise known as Usufruct),
  • and Use Right.

• The last category of Limited Rights In Rem contains the manifold types of Land Easements (otherwise known as Land Servitudes) and the Right of Use for Public Purposes. The classifications below are based on Jurisprudence, not on the letter of law.

b) At first, with respect to the physical character of the object of the right, two types of in rem rights shall be separated as follows.
  – On the one hand, there are genuine in rem rights, the object of which can solely be a corporeal asset (thing). [The classifications below in c)–e) deal exclusively with these genuine in rem rights]
  – On the other hand, there are affiliative in rem rights, the objects of which are incorporeal assets such as rights and claims. The ‘affinity’ means that these related rights are similarly as the genuine rights in rem according to the character, content, and enforceability of the very right. With respect to the extent of power upon the incorporeal asset, affirmative in rem rights can be sub-categorised as

  • statutory ownership-like rights generated by law (e.g. mining rights, and rights to hunt, which were ex lege disannexed and autonomised from the circle of particle rights within the old institution of land ownership),

  • and absolutised relative rights tied with in rem effect, i.e. an in rem-like absolute right—such as copyright, patent right, usufruct, lien or pledge—in a relative right based e.g. on an obligation. In this regard, the utilization (exploitation) of a relative right takes place with an absolute (in rem) effect. E.g. a usufructuary of a claim shall be entitled to enforce the claim, and, if the creditor’s waiver is required for maturity, to exercise the creditor’s right to terminate as well. Other acts of usufructuary relating to the claim shall be null and void. By the debtor’s performance the creditor shall acquire the object of the claimed service, and, at the same time, the usufructuary of the claim becomes entitled to a usufruct in the performed object itself (NHCC Section 5:158 §§ 1–2).

c) The most important classification of genuine in rem rights forms its categories according to the extent of power upon the thing:

  – complete in rem right entitles to full power (plena potestas) upon the thing,
  – while non-complete in rem rights assure only partial power on a thing.

The complete in rem right is called ownership right. The right of ownership legally enables and protects the beneficiary while fully exploiting the thing. It can only be limited and restricted by law within the scope of constitutional and legal guarantees. The full power upon a thing entitles to exercise and to protect all of the so-called particle rights of the full right of ownership:

  – either to possess or to non-possess the thing,
  – either to use or to non-use the thing,
  – either to utilise or to non-utilise the thing,
  – either to dispose or to non-dispose of the thing (i.e. to alienate or non-alienate as well as to encumber or non-encumber it), and,
  – either to terminate or to non-terminate the thing.

Non-complete in rem rights ensure and protect the beneficiary to exercise either one of the above enumerated particle rights of full ownership or some of them in certain combinations (e.g. the use or utilization of a thing typically presupposes its possession, too). It is also possible that the particle right(s) can be exercised in a limited way, since the right of the owner to possess, to use, or to utilise his/her/its thing may restrict the parallel right of the other entitled party. E.g. a usufructuary has no right to dispose (alienate, encumber) either of the thing itself or of his/her own right of usufruct, but is indeed entitled to assign his/her
right to possess, to use or to utilise the thing (cf. Section 5:148 § 1). The person entitled to the mere right of use of a thing (i.e. the user) is, however, entitled neither to utilise the thing, nor to use it without any restrictions (see Section 5:159 § 1).

d) Between in rem rights, there is another relevant distinction: whether it is a right in an own thing (ius in re sua), or a right in a thing owned by another (iusa in re aliena), otherwise an in rem right in a foreign tangible asset. The right in the beneficiary’s own thing can solely and exclusively be the proprietary right, i.e. the ownership right. By comparison, a person’s exclusive ownership rights are totally excluded from the circle of those in rem rights, which can burden a tangible asset exclusively owned by another person. The reason for this lies in the well-known axiom, according to which it is logically, physically and therefore legally impossible for multiple persons to have exclusive ownership rights in the same thing without any material or immaterial division.

The category of in rem rights in foreign things meets more or less the category of limited in rem rights, since exclusive unlimited in rem rights (i.e. ownership rights) of multiple persons cannot simultaneously burden the same thing. In the same tangible asset (thing), an in rem right in an own thing and an in rem right in a foreign thing simultaneously exclude each other:

- on the one hand, a thing’s owner cannot have any limited rights in rem—i.e. rights in rem in a foreign thing—in his/her/its own asset,
- on the other hand, the beneficiary of a limited right in rem—i.e. a right in rem in a foreign thing—loses this right, if acquires the ownership right in that very thing.

e) At last, there are acquired in rem rights and in rem rights to be acquired—otherwise known as (in rem) reversionary rights or reversionary rights. While acquired—complete or non-complete—in rem rights have already been merged into the beneficiary’s estate, an in rem reversionary right (in German law: Anwartschaft) is in a pending legal situation, notwithstanding that the future acquisition of the very right during and at the end of this provisional position cannot be legally precluded or hindered. An expectant, or otherwise, more precisely, an in rem reversioner of a right is e.g. the purchaser of a thing if the seller retains the title of ownership until the price is paid in full [Section 6:216 § 1].

1.2.2. The Objects Thereof, The Estate, and The Assets

1. Since a legislative definition of the notion of ‘estate’ has not been adopted in Hungarian private law, the concept has been defined by Jurisprudence. According to this, a person’s estate is the aggregate, on the one hand, of the total of the person’s positive assets (tangible and intangible properties, otherwise things, rights, claims), and, on the other hand, the total of the person’s negative assets (duties, obligations, debts, counter-claims), the monetary values of which are determined or determinable. The term of ‘positive assets’ is often identified with the notion of ‘assets’ or ‘advances’, while the concept of ‘negative assets’ is usually mentioned as ‘liabilities’. The most commonly adopted parallel expression applied for denominating the phenomenon is ‘assets—liabilities’.

If the total of assets exceeds the total of liabilities, the net value of the estate is positive, i.e. the estate is ‘active’; if contrary, the estate is ‘passive’, and the net value is negative because of the prevalence of the total of liabilities. It is to be emphasised well in advance that, according to continental and Hungarian private law thinking, itself the very tangible asset (thing) owned by a person belong only indirectly to the person’ estate, since only the in rem rights on the person’s things belong directly to the person’s estate.

2. If we want to find a homogeneous answer to the question of what is the general object of in rem legal relationships, there is only one response, which is, however, so general and theoretical that it hardly has a practical significance: Every private law relationship—inclusive of the in rem legal relationships as well—has one common object, which is the human behaviour. This is held to be the direct object of every legal relationship (see above in the General Part of Hungarian Private Law).

The indirect object of in rem legal relationships is the asset, to which the in rem right, through the direct object (human behaviour), intends. According to the NHCG, there are one kind of tangible (corporeal) asset, i.e. the thing, and two kinds of intangible (incorporal) assets, which are the rights, and the claims (see Section 8:1 § 1 point 5). The reason for the lack of a common and general object of in rem rights lies in the fact that there is no codified common and general notion of in rem right either. The diverse genres of in rem rights, which were
enumerated and diversely classified above, have their own different special objects, too. Albeit ownership rights and limited rights in rem both belong to the main class of in rem rights, these can have different objects: In the case e.g. of ownership, pledge, usufruct, collateral security, or land servitude, the Civil Code distinguishes, and it does not allow to subject every kind of assets to the in rem legal relationship.

3. It is therefore untrue that ‘objects of in rem rights are things’, since, on the one hand, there are in rem rights, the objects of which can be not only things, and, on the other hand, there are in rem rights, the object of which cannot be a thing. It seems therefore appropriate to introduce, how Civil Code defines the indirect objects of in rem rights.

- The indirect objects of ownership rights are as follows [Section 5:14]:
  - Things: tangible assets being capable of appropriation, and
  - special objects considered to be things by the fiction of law:
    - special corporeal assets such as money, securities, animals,
    - special incorporeal assets, which are incapable of appropriation, such as the ‘natural resources utilised as capital goods’ [such e.g. as energies (electricity, wind-power, solar energy) and internal gas], and e.g. dematerialised securities.

- The indirect objects of the limited rights in rem are as follows:
  - Not only every kind of assets (things, rights, claims) can be subjected to In Rem Security Rights (pledges, liens etc.) but even a set of assets identified by description (cf. NHCC Sections 5:101–105).
  - Collateral security may be arranged on money and securities, on payment account balances, and on other assets defined by law as collateral (cf. NHCC Section 5:95 § 1).
  - In case of the different kinds of rights of use.
    - Things, and lucrative rights and such claims are regarded as objects of usufruct (cf. NHCC Sections 5:146 and 5:156),
    - while objects of use rights are solely things (see Section 5:159), and the object of a land use right can only be such soil, which a building stands on, if the ownership in the building and in the land are separated (see Section 5:145).
  - The object of land easements (servitudes) and rights of use for public purposes can solely be real estates (NHCC Sections 5:160 and 5:164).

4. So far as the previous thoughts are concerned, the things are the most general and most common objects of in rem rights. A ‘thing’ is defined by the Civil Code as a “tangible asset being capable of appropriation” [Section 5:14 § 1]. Things, in general, can namely be subjected to all kind of in rem rights except collateral security (see above). There is no doubt that the corporeal otherwise tangible assets, i.e. things, are the most colourfully different objects of in rem rights. Therefore, this variability deserves to be introduced through diverse ways of classifications.

  a) By argumentation a fortiori, there are, on the one hand, tangible assets, in which an autonomous and independent in rem right can exist, and, on the other hand, in which such rights cannot exist. The first category contains the autonomous or otherwise principal things, the second one incorporates auxiliary things otherwise side-things. A side-thing related to a principal one ‘shares the legal fate’ of the latter. The reason for that lies in the fact that a side-thing has no, or, does not yet have any physical autonomy, and/or, consequently, any economic—i.e. application, use, utilization and exertion—indeedence.

  For instance, a boat and its oar, and a house and its built-in closing systems are all things, i.e. these are all tangible assets being capable of appropriation, however, an independent right in rem cannot exist either in an oar assigned to a boat, or in a door-system built into a house. Evidently, such rights do exist independently in an oar or in the pieces of a closing system, which do not yet related to their principal things. In this example, this relationship shall be understood as an in rem right in a boat with oars and an in rem right in a house with installed doors automatically—i.e. by law (ex lege)—extends to the auxiliary things (oars and fixed closing systems). A so-called fructus pendens, i.e. a fruit not separated from the object which they originate from (e.g. standing crops, apples still hanging on the tree), does have a physical entity, however, it, as such, cannot be appropriated separately, since it obtains its legal autonomy through appropriation: A pending fruit transforms into separated—an independent thing—through its harvest, which is to be interpreted in this connection as appropriation (i.e. taking in possession).
Thus, auxiliary things (side-things) are narrow connected to their principal things, therefore their legal attributes shall be investigated through this very association. These relations are called coherence of things (detailed notion see above at cohaerentia corporum in the General Part of Private Law).

The concept of coherence of things has many sub-divisions such as:

- **Components** (see the example of the fixed closing system of a house above): “Ownership extends by law to everything that is permanently unified or adjoined with another thing, if their separation or disjunction would cause perdition, destruction or significant reduction of value of any of them” (S. 5:15).
- **Accessories** (see the instance of the ears of a boat): “Ownership shall extend, in case of doubt, to parts that are not components but are usually necessary or beneficial for the proper use or maintenance of a thing (see S. 5:16).
- Another category of coherence of things is that of land and building. Our private law preserves the ancient Roman principle of aedificium solo edit in a dispositional manner since Civil Code says: “Ownership of a building shall accrue to the owner of the land, unless there is a contrary agreement between the owners” (see Section 5:18 § 1).
- There are things without physical autonomy, which are bestowed with legal independence by law. The aim of the lawgiver was precisely to exclude them from the in rem right existing in the principal thing: “Ownership of a real estate property shall extend neither to treasures of earth nor to natural resources” (see Section 5:17 § 2).

b) In the followings, we shall turn to the category of legally autonomous things being capable of appropriation. These can be manifold classified as well.

- First of all, things shall be differentiated with respect to the circumstance, how, and, to what extent the diverse subjects of law—i.e. the state, the local governments, and other legal persons, and natural persons as well—are capable of acquiring the in rem rights, esp. ownership rights in them. According to this classification, there are things, which:
  - are (fully) marketable,
  - have limited marketability,
  - are non-marketable.

These limitations may arise from agreements or laws. If the latter, restrictions shall be based at least on Acts, i.e. either directly on the Fundamental Law or on cardinal or simple acts. The legal restrictions may have effect either to the total right of ownership or solely to its particle rights such as one or more of the followings: right of possession, use, utilization, disposition (alienation and encumbrance). For instance, the treasures of earth, the national roads, the Holy Crown of Hungary, the Building of the Hungarian Parliament and many others are so-called Objects of Exclusive State Ownership. Scheduled national or local monuments are non-marketable since these generally belong to Treasury Assets. Some of local government properties (e.g. local roads) are non-marketable, some of them have a limited marketability declared by local ordinances. In case of firearms, even the right to possession is restricted. The ownership in soil can be acquired by natural persons within the limitation of the spatial extent, in case of acquisitions by legal persons, limitations are defined not only by territory and extent but by personal restrictions as well. An example of limitation of marketability by agreement is the agreement as to succession. In this case, any disposition of the testator for alienating or encumbering the property to which the agreement as to succession pertains shall be null and void (in absence of a contrary agreement; cf. Section 7:50 § 1).

- If an in rem right, typically an ownership right is just existing in a corporeal asset, this is called an owned thing, if contrary (i.e. there is currently no in rem right existing in the very thing because there either cannot or do not exist any) it is named after ancient Roman terminology as res nullius, i.e. ‘nobody’s thing’, or res derelicta, viz. ‘voluntarily abandoned property’.
- According to the things’ nature, physical attributes or other tangible characters, things can be diversified and classified as:
  - alive things and dead or lifeless or inorganic things,
  - solid (simplex) and compound (complex) things,
  - divisible and indivisible things,
• fungible (replaceable) and infungible (irreplaceable) things,
• consumable (capable of being ceased by use for intended purpose) and inconsumable things,
• valuable and invaluable things,
• at last but not least movable and immovable things.

Between things diversified by their nature and physical attributes, there are characteristic overlaps and constant parallelisms:
• complex things are usually divisible,
• alive things are ordinarily consumable, and are typically movables,
• irreplaceable things are mostly inconsumable,
• in the majority of cases, immovables are valuable and inconsumable.

However, it does not exclude oppositional situations either. Namely, it is not inconceivable at all (following the order above):
• that a simplex thing may be divisible as well (e.g. soil),
• that a lifeless thing may be consumable, too (e.g. salt, medicines), or an alive one at the same time immovable (e.g. a forest),
• that a replaceable thing may be inconsumable (e.g. money in cash),
• that an immovable may be likewise consumable (e.g. a mine) or invaluable (e.g. the building of the Hungarian Parliament).

The diversifications and classifications shown above have not only didactic and logical relevance but these always have a private law consequence as well. Without any legal relevance, the categorizations would be an empty playing on words, namely, their so-called raison d’être lies in this kind of implications. Let us introduce to some of them!

– The category of movables and immovables has many private law consequences such as in the case of:
  • encumbering with pledges, liens (e.g. the object of a possessory lien can only be a movable asset),
  • the duration of adverse possession (in case of movables, it lasts 10 years, in case of immovables, it takes 15 years),
  • the un-owned position (an immovable cannot be derelicted),
  • product guarantee and product liability (it exists for movables with respect to the notion of ‘product’),
  • alienation restrictions (approval of guardian authority is required for the legal acts of minors’ legal representatives if concerning the transfer of a real estate),
  • the acquisition by transfer (in case of immovables, a contract for transfer or other legal title is required, and, the change of owners shall also be registered in the Real Estate Register),
  • acquisition of ownership from a non-owner (in case of movables),
  • consignment and deposit contracts (solely for movables).

– Distinction between visible–indivisible assets has private law consequences such as in case of:
  • termination of co-ownership (in case of an indivisible asset, the co-ownership cannot be terminated by the division in kind),
  • partial performance (if a service is divisible, the obligee shall accept it performed partially),
  • multiple liability in an obligation (liability shall be joint and several, if an indivisible service is to be supplied by more than one obligor),
  • limited non-performance (it is allowed only in case of the non-performance of a part of a divisible service).

– The differentiation between replaceable and irreplaceable things is also established by the important private law impacts such as in the event of:
  • acquisition of ownership from a non-owner (in case of money, it is allowed through a simple transfer without further ado),
  • the object of some contracts (only fungibles by loan, life annuity, and collective or irregular deposit contracts, but solely infungibles in case of a plain deposit contract).

– If category of consumable and inconsumable things is concerned, it has significance in case of:
  • long-term legal relationships such as usufruct or lease contracts, since their object can be inconsumable
corporeal assets, otherwise the relationship becomes irregular together with its special rules,

- civil law partnership (if partners contribute inconsumable assets, these shall be used collectively, if contrary, the members contribute consumable assets, these shall be owned jointly).

1.2.3. The Subjects Thereof

According to general rules on legal capacity [Section 2:1 § 1; 3:1 §§ 1–2], a person having legal capacity can become subject of in rem legal relationships. Thus, such persons are entitled to have in rem rights and duties as well; these can be:

- either natural persons,
- or legal persons
  - within the legal persons of private law (e.g. companies, and civil society organisations),
  - and the legal persons of public law having simultaneously a private law personality as well (e.g. the State or a local government).

Considering only, in a narrower sense, the ownership rights, the legal position of its subjects sharply divides the two major paradigms of property, i.e. private property and public property (detailed see below in Law of Property).

The above defined general rule upon legal subjectivity in the law of in rem rights can be restricted by manifold private and public law norms. It means that the acquisition of in rem rights by persons—viz. to become subject of an in rem legal relationship—are limited through much kind of norms. These private and public law restrictions shall be classified in different ways as follows:

- The reason for a legal restriction may lie in the special legal subjectivity of the beneficiary, too. (Namely, the legal position of the State, a local government, a church, an economic operator, a civil society organisation, or a foreign or non-resident person diversifies the extent of capacity of in rem right acquisition.)
- Another reason for a legal limitation of in rem right acquisition may also lie in the speciality of the object (soil, monuments, roads, special rights, frequencies, firearms, the invaluable worth of asset etc).
- The regulation of the process of acquisition may also be interpreted as a limitation factor (in the case e.g. of public procurements, competitions, competitive selection processes, private and official auctions, the stock exchange, or any other regulated market such as commodity exchanges).
- A different restrictions of in rem right acquisitions can be classified with respect to the extent or way of limitation as well, since it may affect:
  - the availability or marketability of the right (e.g. in case of soils),
  - the contents of the acquired right (e.g. the limitation of the acquisition of possession or that of ownership),
  - the temporal scope of the acquired right (in the case e.g. of agricultural leasehold contracts),
  - the physical extent, territorial attributes or any other relevant character of the object to be acquired (see e.g. the maximum allowable extent of soils by sales and leaseholds, or the acreage restrictions).

This schematic frame of restrictions of in rem rights acquisition based mainly on the subjects of rights gives basic answers to the questions of:

- what kind of subject of law (natural or legal person) can acquire the right,
- what kind of object of right can be acquired at all,
- within what measure of time or space can the object be acquired, and
- how, i.e. within what procedural framework can the object be acquired.

For finding the answers to the questions formed above consult the chapters below on the detailed rules of each right in rem.
2. Special Part

After the recapitulation of the General Part of the law of rights in rem comprehending the theory of norms and the doctrine of legal relationships as well, a Special Part shall come, which contains the law of possession and the special rules of specific in rem rights.

This chapter follows the order of the Civil Code (see above). I shall emphasise well in advance that other Hungarian textbooks of the law of rights in rem do not handle this field of law as having two major parts of general and special. I reviewed this practice, and I can state that there are more reasons for doing so than against it.

- Although, generally, contemporaneous textbooks are ended up in the theme of Law of Possession, this book preferably starts its special part with this very issue. The reason for that lies in the fact that it is the possession, which serves as a factual ground, and, in many cases, a legal basis for exercising rights in things, which are the most common and important objects of the rights in rem.

- The issue of the law of possession is followed by the introduction of the rules of ownership, which is the unique complete in rem right entitling the subject of law to full power upon the thing owned. Within it, the chapter of basic notions is succeeded by the content, protection, and acquisition of ownership, then comes the analysis of the special forms of ownership, i.e. joint ownership and condominium ownership.

- The third thematic unit deals with non-complete rights in rem following the structure and order of the Civil Code: The general and special part of the Law of Lien is followed by the diverse genres of the Rights of Ure, and then comes the manifold types of Land Easements (servitudes).

- Since Public Registers concern or may concern almost all kinds of rights in rem, their regulation could be introduced equally well in the general part. Whereas these rules upon the registers are hardly understandable without a detailed knowledge of rules belonging to the special part of this field of law, it seemed more reasonable to discuss them in this part. Another reason is that the system of registers is organised specifically: its different genres (Real Estate Register and Register of Collaterals) are linked with either the physical character of the registered asset (viz. immovables) or the special way of engagement (viz. collaterals) of the thing registered.

2.1. The Law of Possession

The system of the law of possession is a minor field of private law, which regulates the phenomena and settles the disputes arising from cases standing in connection with the right of possession otherwise the right to possess. This small and self-contained branch of law incorporates rules as follows: on the one hand, rules upon lawful possession’s genres, acquisition, loss and protection; on the other hand, rules upon wrongful possession.

2.1.1. Basic Notions Thereof

1. Possession. ‘Possession’ is ordinarily a mere fact, which, in general, proves the power of either an entitled or even an un titled person towards a certain movable or immovable asset for outsiders. This fact is to be interpreted as an upshot of a single movement as well as a conclusion of a process of multiple momenta aiming to achieve a factual power towards tangible assets.

At the same time, ‘possession’ is not only a simple fact but—in fact: principally—a protected substantive right as well. Possession as a substantive right entitles to have power towards a thing for keeping it under control in a way matching the public perceptions. In the vast majority of cases, with respect to the person who possesses (possessor), possession as a fact and possession as a right coincide: the object of possession is possessed by the entitled person.

2. Object of Possession. An object of possession can solely be a thing, be it a movable or an im movable. According to this, speaking about the possession of other assets such as claims or rights is a nonsense.

3. Acquisition of Possession. The acquisition of possession is the legal process for realizing a new legal situation changing the status quo ante of a certain person’s power towards a certain tangible asset. This process may take place
either through a real act—i.e. a factual change of power upon a thing (details see above at ‘legal facts’ in the general part of private law)—, or through a legal act—which is a special transaction called the ‘transfer of possession’.

The acquisition may succeed with or without a legal title as a legal base for it. Legal titles are various: some of them belong to the law of rights in rem—such as an ownership right, a usufruct, a right of use or e.g. possessory lien—, some of them are among the legal titles of the law of obligations—for instance sales contracts, contracts of gift, lease contracts or contracts of deposit.

4. Possessor. Possessor is who realizes otherwise establishes a new legal situation of possession in his/her own favour or in favour of another person, in other words, a possessor acquires and maintains the power towards a certain thing on his/her behalf or on behalf of others. According to Section 5:1 of the Civil Code, there are two main paradigms of possession.

– Possessor is a person having factual power towards a thing as his own (e.g. the owner), or keeping it in power under a temporary right (e.g. a lessee, a tenant, a usufructuary, or other beneficiaries). Therefore, if the thing stays at the same time under a multitudinous possession of various possessors having a legal title to possess, there are two diverse legal situations:

• the one is the co-possession, in which the thing is mastered by two or more partial possessors having the same kinds of rights within the same or different measures (e.g. the one has 10%, the other has 30%, the third one has 60% of the same right to possess the certain thing);

• the other is the divided possession, in which the thing is mastered by two or more possessors having diverse kinds of rights within the same measure:

  • sub-posessor is the one who maintains the actual power towards a thing under a temporary right originating from another's possession
  • principal-posessor is the one whom the sub-possession actually stems from.

According to this, next to an owner as principal-posessor, there can be more kinds of sub-possessors like a usufructuary, a lessee, or a depositary. If the usufructuary gives the thing in lease, he/she will be a principal-posessor with respect to the lessee who is sub-posessor but the usufructuary remains sub-posessor as to the owner. Beside a lessee as principal-posessor, a sub-lessee is sub-posessor, or, adjacent to all of them, a depositary can be sub-possession; here is the lessee a sub-posessor as to the usufructuary or the owner who gave the thing in lease. Thus, a depositary can act either as a sub-sub-possession (for instance: owner → usufructuary → depositary), or as a sub-sub-sub-possession (viz. owner → usufructuary → lessee → depositary), or even as a sub-sub-sub-sub-possession (in case of owner → usufructuary → lessee → sub-lessee → depositary).

– According to the other main regime of possession, possessor is also the one from whom possession of a thing is temporarily conveyed without legal basis to the actual control of another person: from an entitled principal- or sub-posessor to an unjustified possessor such as e.g. to a thief. This is the situation of simultaneous existence of lawful and wrongful possession (below).

5. Lawful (Just) Possession. A possession is lawful since it is established under a legal title and without any exclusive title. In case of an already established lawful possession, there is no legal relevance of the possessor’s knowledge about being or not being entitled to the possession.

6. Wrongful Possession. A possession is unlawful, unjustified or wrongful (synonyms) since it is established without any legal title or contrary to an exclusive title. However, in case of an established wrongful possession, there is an utmost high legal relevance of the possessor’s knowledge about being or not being entitled to the possession if appearance (“I am entitled to possess”) and reality (“I do not have any justification to possess”) differs. There are, namely, two kinds of wrongful possessors:

– a bona fide wrongful possessor is who does not have and must not have knowledge about the fact that the apparent situation differs from the real one;

– a mala fide wrongful possessor is who has or ought to have knowledge about the fact that the apparent situation differs from the real one.

By nature, the private law position of a wrongful possessor of good faith and a wrongful possessor of bad faith is deeply different (see below).

7. ‘Own-Force’. ‘Own-force’ is a created notion in English legal terminology, i.e. a loan translation of
the German ‘Eigenmacht’, which is to be explained as self-authorization for interference. This is an interesting concept since being a ‘legal notion extra legem’ which exists beyond the frames of law. Its non-legal basis is the fist law establishing the rule of force aiming the self-enforcement of self-defined demands.

With respect to the goal of the own-force, it has two variations:
- self-defence aims the repulse of an unlawful offence against the possession;
- self-help targets the termination of an already occurred injury against the possession.

As to the tolerance of the State towards own-force, there are two types as well, i.e. legally permitted and legally prohibited own-force. The latter has two versions:
- unlawful deprivation of possession, and
- unlawful interference of possession (which restrains its maintenance).

8. Protection of Possession. Protection of possession aims either to reacquire lost possession or to terminate the restraint against maintaining possession either by legally permitted real acts, i.e. lawful own-force, or by a legal act for enforcement, i.e. lawsuit for protection of possession.

Protection of possession is a rather special institution since it distinguishes persons worthy of protection from persons not worthy of protection irrespective of the fact that the one to be protected was lawful or wrongful possessor but with reference to the fact that the one to be protected acquired possession by using lawful or wrongful own-force. Seil: “the possessor is entitled to protection of possession against anybody, with exception of the one from whom the possession was acquired by unlawful own-force” (Section 5:5 § 2 of NHCC).

According to two major Authorities of continental private law thinking, protection of possession has two main motivations:
- limiting the own-force through the State power within the reasonable boundaries (F. C. von Savigny),
- granting the owner an eased and accelerated ownership protection through possession protection on the empirical basis that possessors usually are owners (R. von Jhering).

2.1.2. Acquisition and Loss of Possession

1. Most of the time, possession and ownership are accompanied by each other. In modern legal systems, ownerless and abandoned i.e. unpossessed tangible assets can hardly exist. Therefore, acquisition and loss of possession usually are in a mutually correlative relationship. Thus, losses of possession are immediately followed by acquisitions of possession, and vice versa. However, there are two minor exceptions as well:
- dereliction, i.e. a definitive give-up of exercise of power towards a thing,
- joint possession: in this case, acquisition and loss of possession can also be connected to each other partially.

This concept is evidenced by the fact that the Civil Code knows two major ways of loss of possession (cf. Section 5:4 § 1). According to the cited law:
- possessor shall lose possession if definitively abandons physical power towards the thing; but possession shall not cease if the possessor is temporarily unable to maintain the physical power, because, in such cases, it is the mere will to possess, which solely maintains the legal situation of possession (animo retinentur possessio);
- the possessor also loses the possession if it is acquired by others (succession).

2. There are two major different ways to acquire possession:
- on the one hand, so-called original acquisitions mean acquiring physical power towards a thing through real acts (cf. Section 5:2), while,
- on the other hand, derivative acquisitions are more complex modes to acquire possession since these are executed not only via real acts but through inter vivos or mortis causa transactions as well.
  • transfer of possession (see NHCC Section 5:3) is the inter vivos kind of derivative acquisitions,
  • testamentary dispositions are their mortis causa ways. In case of death (or successive dissolution) of the possessor, the possession shall pass to the heir (or successor) after the succession has been opened (or upon succession). The heir’s (or successor’s) legal status shall be determined by the testator’s (or predecessor’s) legal title of possession (see Section 5:4 § 3).

3. Transfer of possession is a bilateral agreement, which is governed by the provisions on contracting and
validity of contracts (cf. Civil Code Sections 6:63–6:115), and by which the physical power towards a thing is conveyed from transferor to transferee. It follows that an invalid (void, null) or legally inexisten transfer of possession cannot lead to a legal change in the legal situations of transferor and transferee. If a factual change of physical power towards the thing was still being executed, i.e. without any valid legal title, the transferee becomes in the legal situation of wrongful possession. Transfer of possession as a legal act, however, can be transacted both with and without the real act of physical handover–takeover.

The following transfers do not necessitate a real act:

- In some cases, a handover from hand to hand is physically impossible: if an immovable is transferred, it is always unfeasible, but there are also movable-transfers, such an execution of which is also hardly imaginable. If such way of handover is excluded, transfer of possession takes its place through the agreement of transferor and transferee relating to the termination of the former possessor’s power towards the thing, the possession of which is to be delivered (traditio longa manu).
- Since Civil Code knows institutionally no detention, and it holds that both principal- and sub-possessors are two different kinds of possessors, a sub-possessor is not in the legal standing of a mere detentor. Thus, transfer of possession can also be carried out without any change in the physical positions but through a mere agreement on the change of legal title of possession (mutatio causae, cf. Section 5:3 §§ 2–4):
  - a sub-possessor becomes possessor (traditio brevi manu), e.g. if a tenant or depositee acquires the ownership of the leased house or deposited movable thing; and vice versa
  - a possessor becomes sub-possessor (constitutum possessorium) by transferring possession of a thing but continuing to hold it (detinere); e.g. when a seller of an immovable remains therein as a tenant.
- If the thing is held by third parties, possession shall be transferred through the mere conveyance of the claim for the thing to the party acquiring possession, if so agreed by the possessor and the acquirer of possession [Section 5:3 § 4]. Namely, if a lienee or a pledge possesses the real security, and the debt of the lienee or pledger is paid by an extraneous person, this one becomes the successor of the lienee or pledger within the proportion of this payment terminating the secured debt. Such succession entitles the payer to the possession of the thing given over as real security. In such cases, transfer of possession takes place without any physical handover but through the transfer of the demand of surrendering the thing (cessio vindicationis).

2.1.3. Protection of Possession

1. To exploit the benefits of a tangible asset—i.e. to use and to utilise it—usually and practically necessitates the possession, namely holding it under physical power. It is an empirically proven fact that possessors generally are lawful possessors who have a legal title of a full or a limited right in rem or a legal title of a right in personam etc. to hold the thing under power.

It follows, according to Jhering (see above), that the main reason for the legal defence of possession is, as a side effect, to offer these lawful possessors as well a simple and fast legal protection for re-instating the former lawful position (in integrum restitution).

2. The institution of protection of possession is used for the defence of possessors, the variegated notion of which was defined above (see there). The law (Section 5:5) provides protection for the following possessors.

- The ‘pure’ or ‘simple’ possessor who stands in a legal situation, where is no principal- and sub-possessor involved in, is entitled to protection against anybody, with exception of the one whom the possession has been acquired by unlawful own-force from.

- Principal-possessors and sub-possessors are also entitled to protection against anybody, with exception of the one whom he has acquired the possession by unlawful own-force from. A principal-possessor is also against sub-possessors (lessee, usufructuary etc.), and vice versa, within the legal title. This means that protection can be issued only if the law ruling the legal relationship establishing sub-possession (e.g. lease, usufruct) grants this right.

- In case of joint possession, there is a two-way protection of possession:
  - Against extraneous (third) persons, protection shall individually accrue to each possessor, and each
possessor shall be entitled to demand the thing to be rendered available for joint possession; the limit has been drawn by the abovementioned main rule saying that possessors are entitled to protection against anybody, with exception of the one whom the possession has been acquired by unlawful own-force from.

- Against each other, joint possessors are also entitled to protection of possession according to their title and proportion.

3. The Civil Code names the matters of facts establishing a legal title for protection in sum as prohibited or otherwise unlawful own-force, which can be divided into two classes:

- in case of unlawful deprivation, possession is lost totally and plausibly definitively;
- in cases of unlawful interference of possession, when possession
  - is lost plausibly only temporarily,
  - or it is lost only partially,
  - or it has not been lost yet but has already been hindered.

4. There are three means of protection of possession (Sections 5:6–8):

- lawful own-force, which is a tool beyond the law as such,
- extra-judicial procedure (possessor process) and
- judicial procedure (petitionary process).

a) Own-force. Prohibited unlawful own-force actions shall not be repelled by other unlawful own-force actions. Therefore, the cause or legal basis of possession’s protection is an unlawful own-force action but the mean of the protection beyond State authorities can only be a lawful own-force action. Which own-force actions are affirmed to be lawful, since protection of possession aims either to reacquire lost possession or to terminate the restraint against maintaining possession?

- A possessor, who was restrained in maintaining his/her possession, is entitled to act in own-force to repel any unlawful own-force action to the extent necessary for the protection (rule of proportionality).
- With respect also to the rule of proportionality, acting in own-force for re-acquiring a lost possession is allowed only if the time lost through the use of other tools of protection would frustrate the success of protection.

b) Extra-judicial possessory process. The so-called possessory procedures are extra-judicial, which means that these are not lead in front of a court but in front of a public authority, i.e. the notary. This procedure is a special process of public authority, which has specific rules according to remedies etc.

- The possessor is entitled to file a request within one year at the notary either for re-instating the former state of possession or for terminating the restraint of maintenance of possession. If requested, the notary may also decide in the questions of interim profits, damages, and costs. The resolution adopted with respect to protection of possession shall be enforced within three days with no regard of taking a petitory process. Anyway, an action can still suspend the enforcement if the decision covers the issues of profits, damages and costs, and if the action was brought in this respect, too. The court may order the suspension of enforcement of the resolution about the main issue of possession, if the resolution seems to be altered.
- The request is granted unless it is evident that the person who has requested protection is not entitled or had been obliged to tolerate the restraint. In case of a successful request, the notary orders re-instatement of the former state of possession or binds the trespasser to stop restraining the maintenance of possession.
- There is no legal remedy against the decision of the notary within the system of administration, thus the resolution cannot be appealed by way of an administrative procedure. But the party who finds the resolution prejudicial can bring an action within fifteen days of receipt of the decision against the other party for overturning the complained decision. The claim shall be submitted to the notary who brought the resolution (see Section 566 § 2 of the new Code of Civil Procedure, i.e. Act CXXX of 2016).

c) Judicial petitionary process. The judicial remedy for protecting possession is a petitionary action which can be brought in court either after the decision of notary as its remedy or instead of the administrative process of the notary. This is a specific civil procedure, in which, on the one hand, plaintiff (claimant) is the possessor aggrieved by prohibited own-force, and, on the other hand, defendant is the one who acted in unlawful own-force. The bill of complaint holds the petition which aims either to restore the former state of possession or to terminate the restraint. The court decides on the ground of eligibility for holding the possession, which means
that the court examines whether the plaintiff or the defendant has a stronger legal title to possess. A stronger legal title is the one which establishes lawful possession with respect only to the other party. The burden of proof (onus probandi) is set by law that the entitlement of the party disturbed in peaceful possession shall be presumed. Therefore, the defendant is bound to prove that he/she has a better ground or a stronger legal title to possess the very asset as the one which the peaceful possessor had. The court delivers the judgment with an immediate effect, i.e. the decision is enforceable notwithstanding any appeal (Section 344 § 5 and Section 362 § 1 point b of the new Code of Civil Procedure).

2.1.4. Wrongful Possession

1. According to common sense and by nature, in case of a wrongful possession, the entitled party is at least partially out of possession. Such a legal situation subsists ordinarily during a period of time, which makes inevitable to settle, the legal fate, on the one hand, of interim decreases and increases of worth of the possessed asset (meantime damages, deteriorations, depreciations, profits, benefits, gains, fruits etc.), and, on the other hand, of the costs and expenditures staying in the background of such changes and fluctuations in the value. The reason for that lies in the main function of private law, which is—among others—to prevent, hinder, and terminate unjustifiable enrichments.

2. In case of wrongful possession, there are theoretically three different kinds of subjects on the two sides of the legal relationship:
   - on the one side of the legal relationship stands the lawful possessor,
   - on the other a wrongful possessor, which is
     - either a wrongful possessor of good faith who, applying due diligence, does not have and must not have any knowledge about the fact that the apparent situation—to be lawful possessor—differs from the actual position—to be a wrongful possessor;
     - or a wrongful possessor of bad faith who, applying due diligence, has or ought to have knowledge about the fact that the apparent situation of having a legal title to possess differs from the actual one, i.e. that the possession has not got any legal basis.

   Apparently, the legal position of these three different kinds of subjects shall be totally diverse with respect to the obligations of bearing risks of loss and of bearing costs, and nonetheless according to the right of exploitation and profit-taking. However, there are duties and rights which are independent of the faith of the wrongful possessor. These duties and rights are regulated in the common rules of lawful and wrongful possessions (Sections 5:9–12).
   - As a rule, wrongful possessors are bound to surrender the thing to the lawful possessor, but a wrongful possessor may refuse to surrender the thing until his/her lawful demands claimed in connection with the possession are satisfied. The surrender may not be refused if the thing has been acquired violently or treacherous, especially by committing criminal offence.
   - With exception of minor expenses required for the maintenance, the wrongful possessor is entitled to demand compensation regarding his/her necessary expenses related to the thing. The wrongful possessor is entitled to remove the equipment and accessories created by him/her without damaging the thing (right of removal).
   - If the lawful possessor fails to remove the thing on demand within a reasonable period of time, and the relocation of the thing would involve unreasonable difficulties or require an advance on the costs, the wrongful possessor is entitled to sell or use the thing. Highly perishable things shall be sold or utilized, if possible; these incomes—i.e. the purchase price or the consideration of the used thing—accrue to the lawful possessor.

3. As a matter of course, the legal position of a bona fide wrongful possessor is more preferred than such legal standing of a mala fide wrongful possessor. The preferred nature of the legal situation has two directions: the one is that sanctions are softer, the other is that rights are wider (Sections 5:10–11).

The quality and measure of useful expenses exceed that of necessary expenses:
   - A wrongful possessor of good faith may also demand compensation for those useful expenses, which are not covered by the possessed thing’s interim benefits accrued in the meanwhile to his/her assets.
A wrongful possessor of bad faith may demand compensation according to the principles of unjust enrichment. According to this, compensation is eligible only for those useful expenses and only within that measure, by which and from which the lawful possessor was enriched.

Surrendering extant benefits, i.e. such interim advantages of a wrongfully possessed thing that still exist at the time of recovery:

- if a wrongful possessor of good faith has acquired the possession for a consideration, he/she is not bound to surrender the extant advantages;
- a wrongful possessor of bad faith and of whatever faith if acquiring gratuitously, is required to surrender the extant benefits.

Liability for damages caused to the thing and responsibility for the compensation of non-extant—i.e. consumed and not collected—interim benefits from wrongfully possessed things before the reclaim of the thing:

- Until possession is reclaimed, the bona fide wrongful possessor is not liable for providing compensation for non-extant benefits and is not liable for damages. Moreover, if recovery is claimed, such a possessor is neither liable for damages caused while exercising presumed right nor responsible to provide compensation for the benefits that has been or should have been collected under presumed right until bringing the action for reclaim.
- The mala fide wrongful possessor shall reimburse the value of consumed and not collected benefits, and, under the provisions of non-contractual liability, is liable for all damages that would not have occurred if the thing had been possessed by the entitled party.

2.2. The Law of Ownership Rights

2.2.1. Basic Notions Thereof

1. Ownership. The ownership is a form of realization of power towards a thing, which enables the one holding the power to enjoy the right of the fullest possible exploitation of the thing in question. Although such rights grant the widest possible rank of enjoyment of a thing, it is neither unrestricted nor unrestrictable.

So far as the constitutional issues are concerned, private ownership is one of the major institutions to limit State Power and—as a pillar of private autonomy—to guarantee the practice of individual freedom as well. As such, ownership is a fundamental right entailing social responsibility for public good [Fundamental Law of Hungary (FLH) Art. XIII § 1] in these days’ societies and Systems of State.

Ownership is the basis of social security Hungary striving to provide to all of its citizens (FLH Art. XIX § 1). The source of this society-wide security is the constitutional obligation, according to which every person shall contribute to satisfying community needs to the best of his or her capabilities and in proportion to his or her participation in the economy (cf. FLH Art. XXX § 1).

2. Ownership Relations. The ownership relations—as plurale tantum—describe the status and changes of relationships between private and public ownership.

3. The System of Property Ownership. Inside a certain society, the system of property ownership means the overall relations of ownership, and, as such, the base of the State’s socio-economic organization.

4. The legal relationship of ownership. The partially beyond-law-concept of ownership relations (as plur. tant.) should be distinguished from the legal notion legal relationship of ownership, which is an absolute private law relationship according to the very object of ownership. The subjects of legal relationships of ownership can be classified in many ways, such as:

- classification with respect to the subjects’ public law standings:
  - private ownership is the ownership that is enjoyed by a person who does not have and cannot exercise sovereign rights;
  - public ownership is the ownership that is enjoyable solely by a person having and exercising sovereign rights; the major part of public goods is the national wealth, to which belong:
    - on the one hand, the state assets, which are
      - the treasury assets, viz. a bound form of public ownership exercised by the holder of sovereignty, and
      - the business assets, viz. a private law ownership exercised by the holder of sovereignty;
on the other hand, the assets of local authorities, which are

- the capital and other non-marketable assets, and
- the business property of municipalities.

- within private ownership, there are two major forms in respect of the subjects’ legal personality:
  - individual property, i.e. the ownership of a certain natural person,
  - partnership property, i.e. the ownership of legal persons aggregating goods.

- within individual property, there are three forms with respect to the singularity or plurality of entitled parties having ownership right in a single thing:
  - personal property,
  - joint property, and
  - a peculiar combination of the afore mentioned ones, i.e. the multi-household building, which has a special legal personality for its own.

5. Ownership. The legal notion of ownership is used two-way:
- as the law of ownership rights, which governs the totality of social relationships according to private properties and lays the private law foundations of public properties;
- as the notion of ownership right, which is the major element of the legal relationship of ownership, and, which legitimates and protects the entitled person’s possibility of action for the owned thing’s full enjoyment.

6. The object of ownership. The object of ownership is the indirect object of the legal relationship of ownership. It differs from the range of objects of in rem legal relationships since these can be diverse kinds of assets such as things, claims, and rights. The range of ownership objects are defined by law. The centre of the regulation lies in the Civil Code [Sections 5:14–20]. According to this:
- in general, the objects of ownership rights may be all things of a tangible nature which are capable of appropriation;
- although in a special way, some peculiar tangibles may also be the objects of ownership rights, such as:
  - money,
  - securities,
  - natural resources that can be utilised as capital goods,
  - animals;
- additionally, otherwise secondarily, ownership extends to some other separate or affiliated tangibles in a specific way, such as:
  - in every case, the ownership of the principal thing extends to its components, which are permanently enjoined with the thing in such a way that disjunction would cause their distraction or depreciation,
  - in cases of doubt, the ownership of the principal thing extends to its accessories, which are parts that are not components but are necessary or useful for a proper use of the principal thing;
  - unless there is an agreement to the contrary, the ownership of a building accrues to the owner of the land;
  - to the extent of a potential use, the ownership of the land extends:
    - to the airspace above the land,
    - and to the land mass underneath it;
  - by no means can the ownership of the land extend:
    - to the treasures of the earth,
    - and to the natural resources.

2.2.2. The Content of Ownership

The content of ownership is not equal with the content of the legal relationship of ownership. The latter is an absolute private law relationship, the content of which is that the entitled party holds the ownership right itself, and other persons are obliged to acknowledge, to tolerate and not to violate this party’s right. The ownership grants the widest although not illimitable extent of power towards a thing for its utter enjoyment and fullest exploitation with some certain possible restrictions provided by law. According to this, the content of
ownership implies the rights of the owner with its specific restrictions based either on public law or on private law. Some of these restrictions can be taken also as the duties and obligations of the owner. The advantages of a thing (commoda) enjoyed by the owner requires the owner also to bear the burdens in connection with the ownership (incommoda). This is an ancient principle of natural law, which had already been formulated by some excellent jurists of Imperial Rome (D. 50,17,10; Sabinus, Paulus), too: „secundum naturam est commoda cuinque rei eum sequi, quem sequentur incommoda”, which says: “It is according to nature that the advantages of anything should attach to the one, to whom the disadvantages attach.”

Our Civil Code says that the owner is entitled to a full and exclusive power granted by law in the object of ownership within the framework of law and without prejudice to the rights of others [Section 5:13 § 1]. Some typical elements of this “full and exclusive power granted by law” are enumerated exemplificative by the Civil Code. According to this, the right of ownership incorporates the following particle rights, which can be restricted and limited by private and public law norms as well:

- the right of possession, and the right for protection of possession, too;
- the right of use, and the right to consume and expend the thing;
- the right of utilization, and, together with it, the right to use it up;
- the right of taking benefits from the thing, i.e. to fructify it, and to acquire the thing’s natural and civil fruits by their separation but not by gathering them;
- the right of disposition, which has other subcategories such as
  - the right of alienation,
  - the right of encumbrance,
  - and the right to convey the exercise of each particle rights;
- in addition to the possession’s protection, the right of ownership protection;
- the right to destroy the owned thing;
- the right to refrain from and to definitively give up the exercise of such rights.

2.2.2.1. The Right to Possess, Use, Utilise and Fructify, and the Restrictions Thereof

1. The owner of a thing is entitled to possess the thing, i.e. to keep it under his/her power granted by law according to the rules of possession (see above). It follows that the owner is also entitled to the right of possession’s protection:
   - if the owner indirectly exercises the right of possession, he/she has the right of protection after the general rules of possession’s protection;
   - but if the owner temporarily conveys the exercise of the possession right to another by any private law title, the protection of possession is granted to him/her solely as to a principal possessor (see above).

2. It is in accordance with natural law that if an owner is entitled to use, to utilise and to take the benefits of the owned thing (commoda), in return, the owner is bound to bear the burdens and expenses (incommoda) as well as the risk of damages, for which no compensation can be demanded from anyone else (casum sentit dominus; see in Section 5:22).

The burdens of the owned thing consist of the followings:
   - the costs of investments and expenditures, which either can add or uphold the objective and/or the subjective value of the owned thing;
   - the private and public law restrictions and limits of the particle ownership rights,
   - the dues such as taxes, duties, customs, tariffs, fees etc.

The duty of bearing the risk of occurred—but not threatening or imminent—damages concerns solely those damages, for which no compensation can be demanded from anyone else. Therefore, real factual damages (damnum emergens) can either be borne by the owner or be compensated by others such as:
   - the one who wrongfully causes damage (delictual liability),
   - the one who is liable for not wrongful damages,
   - the insurer,
   - the party who acquires a thing as a service in the base of a void contract,
   - the party who acquires a thing as a contractual service of a valid contract,
3. The use of a thing means the proper or improper usage of an own or another's thing and the thing's interim benefits without any entitlement of acquiring these benefits—i.e. natural and civil fruits, outputs, increments, proceeds, profits—arisen during or because of the use. An improper usage is also qualified as 'use' but it is sanctioned if realised with respect to another's thing [Sections 6:167 § 2 and 6:227 § 2]. To expend or to use up a thing means that a thing expires while properly used.

- it is utilization, if it goes with extra benefits, and,
- it is consumption, if it has no extra benefits but solely those advantages which emerged by the mere use of the thing for the user's aims.

A factual use does not necessarily equal with the notion of use based on a legal title. While the latter always has a valid entitlement, the former is a mere fact regardless of having a legal title to do so or not. With respect to the thing's nature and function, the use of a thing, in general, necessitates the factual power towards it, i.e. that the user shall be either in the legal situation of a possessor or—at least—of a sub-possessor.

4. The right to acquire the benefits of the thing, which can be based either on an in rem title (e.g. usufruct) or an in personam title (e.g. lease agreement), belongs to the right of utilization but not to the right to use. In case of licensing contracts (lease, leasehold, lending), the contractual right to use sometimes contains a restrained right of utilization, too. This limited right of utilization means that the sub-possessor (lessee, borrower) is entitled to utilize the object of contract with the permission of the principal-possessor (lessor, lender). If the sub-possessor gives the object further to a third for use or utilization without permission, he/she falls under strict liability.

5. Public law restrictions of the particle rights of ownership are multitudinous. The mere right of possession can be limited either by laws which restrain the possession of some dangerous things (weapons, chemicals, drugs, pharmaceuticals etc.), or by laws which bind the possessor for being officially controlled and registered. Public law restrictions of the right of use are e.g. the rules of the road, traffic regulations, or the prior authorization of automobiles' operation. The right of utilization and fructification can also be restricted by public law, in case e.g. of the strict rules of land cultivation or the sectoral legislation of agriculture or forestry. There are also public law restrictions, which concern all particle rights at the same time, because these legally deprive the whole of the right of ownership or of exploitation. Such restraint is e.g.:

- the expropriation,
- the obligation to disposal, or
- the use for public purposes.

These massive interferences into private autonomy shall also have a serious guarantee as well, i.e. the immediate, full and unconditional compensation.

6. The variegated private law restrictions of the particle rights of ownership are defined mainly by the Civil Code. These restraints stem from the law of rights in rem as well as from the law of obligations, among the general and special rules of contracts entitling for enjoyment of one or more particle rights of ownership.

This chapter does not deal with the latter. Just for instance, an important restriction of ownership rights is among the rules of the leasehold of arable lands. The lessee is entitled to gather the land's proceeds within the “requirements of prudent management”, and is obliged to cultivate the land according to its designated purpose and shall preserve the fertility of the land [Section 6:350]. The reason of this rule is that soils and arable lands merit a specific protection regime.

The rule of the so-called General Private Law Limitation of Use says that while using a thing, the owner shall refrain from engaging in any conduct that would unnecessarily disturb others (especially the neighbours) or peril the exercise of others' (especially the neighbours') rights [Section 5:23]. Furthermore, there are special private law limitations, which aim either to facilitate the exercise of other persons' ownership rights or to protect other owners. Such limitations are:

- the mutual rights of neighbourhood,
- the right to use in emergency,
- the rules of wrongful building beyond the own land's boundaries.
7. The regulation of the rights of neighbourhood takes its place in the Civil Code and in a very short special law (Sections 1–6 of the Act CLXXIV of 2013). According to these, the rights of neighbourhood are to be named as:

– the right for a ground support, to which the owner of the neighbouring building is entitled (§5:24);
– the right of access to the neighbouring land: the owner shall permit access to his/her land for compensation if it is necessary for
  • doing works of public interest,
  • harnessing animals,
  • gathering fruits of branches reaching over the land,
  • removing branches and roots,
  • (re-)construction, demolition, maintenance (Section 5 :25);
– the right to withhold trespassing animals;
– the right to catch the swarms of bees flew out;
– the right to gather the fruits, which fell onto the neighbour’s land from an own tree;
– the mutual right of the neighbours the acquire plants and to use constructions standing on the boundary-line of neighbouring lands.

8. Emergency—in a private law sense—means a direct threat to the life, physical integrity or property of another person that cannot be prevented in any other way. In case of such an emergency, the owner shall tolerate his/her property to be accessed and used or damaged to the extent necessary for abolishing this kind of danger. The owner damaged by an emergency intervention is entitled to:

– compensation according to the rules of non-contractual liability from persons who caused unjustifiably great damage while abolishing the emergency,
– and indemnification from the persons who were in emergency.

If such emergency threatens only the property of another, the obligation binds the owner so long as the imminent damage’s extent, as it is foreseeable, substantially exceeds the extent of damage likely to be caused to the owner by the emergency intervention.

Our law maintains the ancient rule of lex Rhodia de iactu mercium in a special way. Namely, Section 26 § 3 says that if such emergency threatening several persons is necessarily prevented by the release (i.e. relinquishment, abandonment) of some things at the same risk, the damage from this shall be borne jointly by the affected ones in proportion to their interests at risk.

9. Wrongful building beyond boundaries. If the owner builds a house without any legal title beyond the boundaries of his/her own land (wrongfulness), the Civil Code distinguishes the situations of doing so in good faith and in bad faith:

– a bona fide builder does not know, and, although acting in due diligence, ought not to know either that he/she has built beyond these boundaries,
– a mala fide builder knows, or, by acting in due diligence, should know that he/she has built beyond the boundaries of the land.

In case of a wrongful building beyond the boundaries in good faith, the neighbour is entitled to demand the builder:

– pay indemnification for the damages from the use of the built-up part of land and from the depreciation of the touched land’s value;
– purchase the built-up part of the land (only if it is divisible); or
– purchase the entire neighbouring land if the wrongful building has made
  • the remaining part unusable,
  • or the exercise of a right or profession related to land impossible or considerably more expensive.

In case of a wrongful building in bad faith—or if the neighbour protested against these operations in time, i.e. when restoration would not have caused unreasonable harm to the builder—, the neighbour, in addition to the aforementioned demands of a bona fide builder, is entitled to demand

– the builder demolish the building at his/her own expense with the builder’s right to removal of demolition material,
or transfer the ownership of his/her land and building in return for a proper reimbursement of the value of these transferred immovables.

2.2.2.2. The Right of Disposition and Its Restrictions

1. It is undoubtedly the right of disposition which makes the ownership a full power towards a thing (*plena potestas*). This very particle right distinguishes the full power of owners and the minor power of the entitled ones of limited in rem rights.

According to the Civil Code (see Section 5:30), this full power of the owner entitles him/her to:

- convey the particle rights or solely the exercise of these rights to another, i.e.
  - the possession of the thing,
  - the use of the thing,
  - the utilization and fructification of the thing;
- encumber or—in any other licit way—burden the thing;
- alienate the ownership right in the thing;
- destroy the owned thing;
- refrain from and give up the exercise of such rights.

2. The most important and powerful private law restriction of the right of disposition is the Restraint on Alienation and/or Encumbrance (Sections 5:31–34). A restraint on alienation and/or encumbrance can be legally based on:

- the owner's disposal for ensuring a right in the object of ownership (e.g. a right to maintenance); in case of real estates, not only the ensuring restraint shall be registered but the ensured right as well (since ensuring restraints cease if ensured rights are extinguished);
- law,
- and court decision.

The legal consequence of such restraint is that the entitled party's consent is required for any disposition contrary to the restraint, and a disposition contrary to the restraint is ineffective with respect to the person whose right it is intended to protect. The restraint does not limit any acquisition of right for consideration by persons acting in good faith.

2.2.3. The Protection of Ownership

1. In view of the institution of private property has an enormous social and economic significance, the right of ownership is protected through many branches of law, including:

- public law with many tools such as the ownership protection of
  - constitutional law (protection in the range of fundamental laws, restraint with respect to social responsibility, expropriation with serious guarantees),
  - criminal law (crimes against property and economic crimes), and
  - administrative criminal law as well;
- the private law tools of ownership protection are as follows:
  - from the tools of protection of possession,
    - the owner is directly protected by the right of lawful own-force,
    - and indirectly—i.e. through the fact that the owner possesses the owned thing—protected by other possession protection tools;
  - the lawsuit for protecting ownership (*rei vindicatio*),
  - the lawsuit for protecting the privacy of ownership (*negatoria in rem actio*),
  - the lawsuit of replevin within enforcement,
  - and the actions in connection with the Real Estate Register.

2. The right of ownership stems from an abolutate private law relationship, the harm of which produces a new, relative legal situation, which entitles the owner to use the tools of ownership protection through
the so-called ownership claim, the legal basis of which is the changed, relativised legal situation. The socio-economic significance of the ownership is in balance with its guaranteeing tools, i.e. the institutions of ownership protection, since ownership claims never lapse, so their prescription is excluded by law [Section 5:35]. This means that ownership claim exists so long as ownership or its harm persists. If the owner no longer has the object of ownership, the in rem claim transforms into a relative (in personam) claim which lapses within the period of limitation defined by law.

3. The owner, according to the rules of possession protection, may restrain or prevent every wrongful intrusion and other unjust interference impeding, restraining, or making impossible the exercise of ownership rights.

4. In a lawsuit for protecting ownership (rei vindicatio), the owner claims the termination of wrongful intrusions or interferences, or the surrender the thing from the wrongful possessor. For succeeding in the case, the plaintiff shall prove that he/she is the owner of the thing in question, and so his/her right to possess is based on his ownership rights.

In case of lawsuits for immovables, the plaintiff refers to his/her registered ownership, and the defendant can therefore refer only to the fact that the registration of the plaintiff’s right infringes his/her rights, for example because defendant had acquired the ownership before the plaintiff acquired it. If the plaintiff has no registered ownership, the lawsuit can be brought only for registration although this action is not a rei vindicatio but an action for registering ownership.

In case of lawsuits for movables, the legal standing of the plaintiff is much more complicated, because the ownership right is established mainly without any official registration. Therefore, for succeeding, the plaintiff shall prove

- either that he/she acquired the subject-matter of the litigation through an original acquisition (such as usufruition, administrative decision, official auction, occupation, trove);
- or that he/she acquired the property by a derivative acquisition (such as transfer, fructification, processing, succession, acquisition of games and fishes etc.), and, if so, he/she is bound to prove the acquisitions of his/her legal predecessors until one of them acquired the thing through an original acquisition, because it can break the link. This burden of proof (onus probandi) is so heavy that such evidence is called the diabolical proof.
- Contrary to these, the defendant shall prove only that he/she has acquired entitlement to possess directly from the owner (because the defendant is e.g. a usufructuary or a lessor), or he/she has such right indirectly from a sub-possessor (lessor) of the owner as principal-possessor (because the defendant is e.g. a sub-lessor), or he/she is entitled to possess by law. If sub-possessor unlawfully conveyed the possession to a third, the owner is entitled in the name of the sub-possessor to demand to return it to the sub-possessor; if sub-possessor refuses to accept it, the owner is entitled on his own behalf to demand to surrender the thing.

5. The owner may bring a lawsuit for protecting the privacy of ownership (negatoria in rem actio) on the legal basis of his/her ownership right for having the wrongful and unlawful intrusions and interferences to be stopped. The burden of proof is similar in the case of the rei vindicatio with the proviso that, in this action, the plaintiff can target only so-called negative conducts by the defendant:

- on the one hand, the cessation of intrusion or interference,
- on the other hand, for the future, the prohibition of such conducts.

6. In the lawsuit of replevin within enforcement, the plaintiff brings the action to recover the asset from seizure, if he/she demands the seized assets on the legal basis of his/her ownership right (or any other right which can block the sale of the asset in judicial, administrative, or tax enforcement proceedings). Seized assets may not be claimed by any person who is held liable for the debt subject to enforcement jointly with the judgment debtor. In the case of a real estate encumbered with usufruct, the usufructuary may not request to have the property released from seizure. If the seized thing is in joint ownership, either co-owner may individually bring the action (New Code of Civil Procedure; Section 538).

If the court decided in favour of the plaintiff, the claimed thing shall be released from seizure, or, if the claimed asset has already been sold (and if the amount covering the price is available at the deposit account of the bailiff), the court shall order disbursement of that sum. If the court's decision is in favour of the usufructuary, the encumbered thing shall be released from seizure solely with respect to the usufructuary, with the proviso that it may be sold only by the usufruct will have been ceased (see the New Code of Civil Procedure,
Section 544).

7. There are three different kinds of actions concerning Real Estate Register:
   - **Action for registration**: the owner of a real estate, if he/she has acquired from a non-registered owner, may claim for having his/her ownership registered in the real estate register (Civil Code Section 5:37).
   - **Action for deletion**: an entry or record in the real estate register is to be deleted if the transaction being the legal basis of the entry or record is void, or if the entry or record subsequently becomes inappropriate (Section 5:183). According to Section 62 of Act CXL I of 1997 on Real Estate Registration, a lawsuit may be brought before the court
     - for having a registered entry cancelled and the original status re-instated on the grounds of invalidity by the person whose right of record has been injured by the entry;
     - solely for having an entry cancelled by the interested party if able to prove that the right of record has been lapsed or terminated, or the registered fact has changed.
   - **Action for correction**: if an erroneous entry cannot be cancelled during the proceedings of authority supervising the real estate, or if the injury caused by the error cannot be remedied, an action may be brought before court by the person aggrieved due to erroneous entry for having an entry corrected.

### 2.2.4. The Different Modes of Ownership Acquisition

1. Since ownership acquisition has multitudinous matters of fact, it also has many different ‘modes’ (modus adquirendi rerum dominii) to be classified in various ways:
   - whether ownership is established in an already existing thing or a newly formed or created one;
   - whether ownership is acquired relating to possession or regardless of it;
   - as per the acquisition is “original” or “derivative”.

2. The decisive and authoritative classification is, according to the concepts of modern Continental private laws, the diversification in the base of whether the mode of acquisition is “original” or “derivative”. For good reasons, Hungarian Civil Codes (Act IV of 1959; and Act V of 2013 in effect) has never applied this theoretical categorization of the modes of ownership acquisition.

The origin of this classification goes back into the Middle Ages. In all likelihood, its first appearance took place in the works of Bartolus de Saxoferrato who was the greatest post-glossator (commentator) of the 14th century. The diversification could be useful primarily for didactical purposes, because the many ways of acquisitions was easier to learn while classified. After this period, in the 17th century Law of Nature—at first maybe in the œuvre of Hugo Grotius—, the categories were applied in international law for classifying the different ways of acquiring territories. The 18th–19th century Pandectistics, i.e. the most meaningful school of German private law Jurisprudence, used the terminology for categorizing different ways of private law acquisitions of property (ownership). I shall add that Philosophy and Epistemology have also used the terms since the time of Immanuel Kant (18th century)—in the base of Aristotle—for differentiating the two major ways of cognition called “aquisitio” (sic!).

An original mode of acquisition does not presuppose a previous or former ownership in the implied thing, although there could exist one, but this is not an aspect to be respected. According to this, the realization of the matters of fact of an original acquisition produces a novel ownership which has never existed before. Whether there existed an ownership previously in the thing, or not, a new ownership is never linked to any other rights in rem. Therefore, encumbering rights—such as servitude, usufruct, lien, or pledge—of other entitled persons cannot survive the establishment of a new ownership in the encumbered thing through an original way of acquisition. There are three different groups of original acquisitions:
   - the one is, if ownership arises in a thing never owned before;
   - the other is, if the thing is already owned by someone but the acquirer creates novel ownership without the contribution of the previous owner who is, therefore, no legal predecessor of the new owner of the thing;
   - the third one is, if the new ownership right is created by a fact that is independent even of the person who acquires the new right—such facts are e.g. natural events or the act of third parties (extraneous).

The derivative mode of acquisition is otherwise called legal succession since the new owner acquires his/her
ownership either from another person or with respect to the ownership right of another person—who becomes after the acquisition a legal predecessor. Derivative acquisitions never create new ownership rights, the ownership right of the new owner is derived from that of his/her legal predecessor. These acquisitions, therefore, on the one hand, do not touch previously established encumbrances in the acquired thing, and, on the other hand, the successor—

with some exceptions—does not become owner if the predecessor had no ownership right in the thing acquired. Its basis goes back into the law of Ancient Rome. Namely, an ancient Roman legal principle called “nemo plus iuris ad alium transfere potest quam ipse habeit” says in Ulpian’s Commentary to the Edict that “no one can transfer to another more rights than he/she has himself/herself” (nemo plus iuris ad alium transfere potest quam ipse habeit; D. 50,17,54).

3. The most important and most frequent type of derivative modes of acquisition is the transfer. In this case, a successful derivative acquisition necessitates two coherent criteria (conditions “sine qua non”) which are two transactions:

- a valid disposal transaction (Verfügungsgeschäft), which is a mode of acquisition (modus adquirendi), i.e. a transfer agreement, which is the conveyance of possession of the thing to be acquired;
- a valid commitment transaction (Verpflichtungsgeschäft), which establishes a legal title for the acquisition (insta causa adquirendi) based on a contract such as e.g. the contract of sale or gift.

The title of acquisition per se establishes only an in personam claim for the thing transferred. The execution of the commitment transaction is the disposal transaction, by which an in rem claim emerges. According to this, there are three kinds of property conveyance systems in Continental Europe:

- in a causal, otherwise conventional model, which reigns e.g. in France, a successful acquisition of ownership necessitates only a valid commitment transaction, no disposal transaction needed for the transfer;
- according to the abstract model prevailing in German law, a sole valid disposal transaction is sufficient for the transfer making the positions changed;
- in contrast to these, the traditional model, which is based on the ancient Roman system of ownership acquisition, governs the ownership transfer in Switzerland, Austria and Hungary; it necessitates both commitment and disposal transaction for the success of property transfer.

4. University textbooks, as a rule, distinguish between movables’ and immovables’ acquisitions within the two systems of original and derivative acquisition. This method superfluously duplicates the classification. Therefore, we do not accept this way to be followed.

Ordinarily, the Civil Code rules of ownership acquisitions are tailored to the movable assets, unless a specific mode of acquisition, by its nature, applies exclusively to immovables (e.g. expropriation, accretion, building on another’s land), or, on the contrary, solely to movables (e.g. the occupation of lordless assets, i.e. nobody’s movables). Thus, it seems to be sufficient to introduce first the rules applying to moveables and then the exceptions being effective for immovables.

5. It is also to be emphasised that even the textbooks on the law of rights in rem are not consistent with each other in the classification of each mode of acquisitions into the categories of original and derivative acquisitions—e.g. the acquisition of products, proceeds and progenies (fructification), acquisition of games and fishes, or building on another’s land are not in the same category of acquisition in each and every textbooks.

This is a disturbing and confuse phenomenon, the reason of which lies in the fact that different textbooks define the major categories of originality and derivativeness in diverse ways. By logic, it follows then that diverse categories can incorporate only diverse species of acquisition modes. The outcome of the lack of communis opinio is that the whole issue of this categorization loses its raison d’être since it results in incoherency. Thus, it appears necessary to find the fundament of the definition of originality and derivativeness, which is historically authentic and temporarily near to our age. The basis for it is offered by German Pandectistics (see Point 2 above).

Furthermore, since the notion of derivative and original acquisition do not contain the aspect, whether the thing was acquired through its formation (creation) or the acquisition took place in an already existing thing, taking these facts into account while making a correct definition shall be avoided. Originality consists in the novelty of the ownership but not in the recentness of the object of ownership (see Point 2 above). Namely, there are examples when a new ownership is established in an already existing thing (e.g. usucapion), and, on the contrary, when an earlier nonexistent thing is acquired derivatively (e.g. accretion, building in another’s land,
fructification). In case of *derivativeness*, the significant factor is whether the thing is acquired from the legal predecessor or with respect to the rights of the legal predecessor (cf. the content of original acquisition in Point 2 above). The classes of original and derivative acquisition can only be read ‘between the lines’ of the Civil Code, which—in a moderate way—does not mention them in its chapters’ titles. However, in the base of the aforementioned factors, we do classify here the modes of acquisition into these categories by using the authentic content of each notions introduced above.

6. It shall also be accentuated that good or bad faith of the acquirer has a great significance concerning almost all of the modes of acquisition, although there are acquisitions, in the case of which the issue of acquirer’s good or bad faith shall be avoided (e.g. usucapion), and there are acquisitions as well, in which *bona or mala fides* can never happen to arise (e.g. accretion).

I shall also stress that, for some cases—like when a person acquiring a right relying on the real estate register in good faith, the Civil Code defines itself the content of the notion of good faith for the reasons of guaranteeing e.g. legal certainty. In this connection, the lawgiver has defined:

- the content of good faith as matters of fact;
- whether the acquirer may refer to his/her good faith or not;
- what is the relevant moment, in which the former existence of good faith is to be examined, and when shall these issues be examined; namely: the time of investigation and the time for which the existence of *bona fides* is examined may differ.

2.2.4.1. The Original Modes Thereof

1. On the base of the abovementioned historically authentic notion of original modes of acquisition of movables and immovables are as follows:

- Means of Administrative Decision and Official Auction,
- Expropriation (only for Immovables),
- Adverse Possession (i.e. Usucapion),
- Appropriation of Derelict Property (i.e. Occupation; only for Movables),
- Finding (i.e. Treasure; only for Movables),
- Treasure Trove (only for Movables).

2. Acquisition by Administrative Decision and Official Auction [Section 5:41]. If someone has acquired a thing in good faith by administrative decision or official auction shall gain ownership irrespective of the previous owner. The latter phrase tells us that this acquisition is doubtlessly original: the encumbering rights of third persons established under the authority of the previous owner lapse if the new acquirer was in good faith according to these right’s existence. For an acquisition of a movable by administrative decision, it is necessary to transfer the thing’s possession. In case of immovables (real estate), the title of acquisition is needed to be registered in the real estate register.

*Simili modo*, in case of an official auction the buyer acquires the ownership if the auctioneer transfers the auctioned movable’s possession to him/her. If the object of auction was an immovable (real estate), the ownership title is acquired if it became registered in the real estate register.

What is the codified definition of good faith [Section 5:172] in the case of a *bona fide person* who acquires a right relying on the data of the real estate register? This special notion of good faith is to be applied in every case of acquisition of immovables’ ownership.

- If a court or an authority examines the good faith of an acquirer referring to it, the existence of good faith shall be examined with respect to that time when the application for acquisition’s registration was submitted in the real estate register.
- The acquirer cannot be considered acting in good faith, if, in time of acquisition, he/she knew or should have known that a registered relevant data was incorrect, or that the rights of a registered right-holder were restricted.
- An acquirer may not allege his/her good faith against a person who bases his/her title of acquisition upon a right or fact to be henceforth registered or recorded, which right or fact had already been registered or recorded as a provisional apostil at the time of examination of good faith’s existence, if the right’s registry or the fact’s recording was later on in fact carried out.
3. Expropriation. As the most radical restriction of ownership, the expropriation necessitates even constitutional guarantees. Therefore, the institution's regulation is located, on the one hand, in the Civil Code (Section 5:43) and the special law upon expropriation (Act CXXIII of 2007), and, on the other hand, in the Fundamental Law of Hungary (Art. XIII § 2). Ownership of real estates can only be expropriated for public use, under exceptional circumstances, and against immediate, full, and unconditional compensation—says the text of the Civil Code similarly as that of Fundamental Law.

4. Adverse Possession (Usucap[ion]; Section 5:44–49). The lawyer tears the legal conditions of adverse possession away from the requirement of good faith of the adverse possessor. The Civil Code orders that a person acquires ownership of a thing or a share of a divisible thing through adverse possession, who:

- has had continuous possession for a fixed time—with the proviso that the new adverse possessor is entitled to add his/her predecessor's usucapion time to his/her own time of adverse possession—;
- the duration of adverse possession for a successful usucapion is:
  - 15 years in case of real estates,
  - 10 years in case of movables;
- the adverse possessor shall possess the thing as his/her own; this means, by the way, that the circumstance of good faith is not qualified as a condition sine qua non.
- No person shall acquire ownership through adverse possession who has taken possession of a thing
  - by committing a crime,
  - or in another violent way,
  - or in a treacherous way.

The adverse possession as an original mode of acquisition is openly expressed by the Civil Code, since it says that:

- In case of movables’ usucapion, the rights of third parties in the thing shall cease if:
  - such rights had arisen before the adverse possessor got into possession,
  - and in connection with these rights of a third the duration of adverse possession has expired,
  - except when the adverse possessor acted in bad faith with respect to these very rights.
- In case of usucapion of real estates and special registered movables such as ships or aircrafts, even a registered restraint on alienation or such encumbrance does not preclude the acquisition of title through adverse possession—by nature, if other conditions are met.

If an owner, for an excusable reason, is not in the position of exercising the ownership rights, adverse possession shall not take place for 1 year from termination of impediment, even if the time of usucapion has elapsed or there is less than 1 year of it left. This institution is called the suspension of adverse possession’s duration. After the end of such suspension, the adverse possession’s duration goes on continuously, and the time of adverse possession already elapsed shall be counted in the duration of usucapion.

In contrary to suspension, if discontinuance of adverse possession eventuates, the duration elapsed until the emergence of discontinuance may not be taken into consideration, and the period of adverse possession, after the causal basis of its discontinuance has already terminated, starts again, if:

- the owner brings an action to have the thing surrendered;
- the owner exercises his/her ownership rights in the very thing;
- or the adverse possessor loses the thing’s possession against will, and fails to re-acquire it within 1 year, or, again, within 1 year, does not bring an action against the thing’s new possessor to surrender it.

The notion of “cadastral usucapion” lacks from English legal terminology. It is an artificial legal concept created by the composition of independent English legal terms. This special genre of adverse possession is an old institution of Austro-Hungarian private law (1853–1959) following the Austrian Civil Code’s (ABGB) idea of “Tabulariersitzung” (§ 1467 in effect until 1917). According to this, the title to a real estate can be acquired by adverse possession only after 5 years:

- if the possessor acquired possession from the owner,
- if possession is acquired by means of a written contract, which would give right to registration of title in real estate register if the contract met formal requirements prescribed by law,
- and, if the possessor has already paid the consideration.
5. Acquisition of Derelict Property (Occupation; Section 5:52). The ownership of a derelict movable can be acquired by any person who takes its possession with the intention to acquire ownership. The historical predecessor of the institution was the antique Roman occupatio. The origin of this mode of acquisition goes back to prehistoric times because this kind of acquisition of power upon goods was inevitable for mankind’s survival even in ancient times.

A movable is considered derelict if it was never owned before by any person, or, was abandoned by its owner with the intent to relinquish ownership. If a movable thing was abandoned without the intention of ownership relinquishment (res amissa), the taking into possession thereof, although with the possessor’s intention to acquire ownership, cannot result in successful acquisition. This case may belong either to adverse possession or, more precisely, to finding.

I shall stress that the group of movables being acquirable by occupation has become much narrower than it was in the Antiquity, or in the Middle Ages, because the number of things belonging to State ownership has strongly escalated, and the registration of titles to movables as well as to immovables has extremely expanded. According to this, nowadays, wild fauna—including terrestrial and aquatic animals—and flora—e.g., the trees of forests—are no more derelict assets being capable of occupation; these are, namely, under the ownership either of the State or of water or forest owner. The exploitation of these assets takes place, therefore, upon in rem rights of utilization. These days, there are no occupiable immovables, and the number of movables being acquirable through occupation has become very few, such as, for instance, wild fruits, herbs, and consumable plants and smaller animals of meadows and forests (e.g., snails and some insects).

6. Finding (see otherwise as ‘Trove’; cf. Sections 5:54–63). A person who finds a lost thing that is presumably owned by somebody else (res amissa) and takes possession thereof, acquires ownership in the found thing by having intention to have it, if:

- the finder has done everything what was expectable from him/her for returning the thing to its owner who lost it, and
- the owner (or any other person authorised to collect it) has not come forward to take it in possession within 1 year of the day which it was found on (or, in case of live animals, within 3 months)

If the owner (or the one who lost it or any other person who is authorised to collect it) does not give a notice within the mentioned period, and the finder does not acquire the ownership thereof, the ownership or the purchase price received for the found thing’s sale shall accrue to the State. Within 8 days from the day of finding, the finder is obliged to hand the thing over either to: the person who lost it, or to its owner, or to any other person authorised to collect it, or to the notary by reference to the place of finding.

If the person who has title to collect the thing can be identified, the notary gives the thing over to this one without delay. If the entitled person cannot be identified, the notary shall retain the thing for 3 months from the date of receipt; if the owner fails to give a notice during this period of time, the thing shall be released to the finder. The finder is entitled to use the thing without causing any damage to it but has no right of disposition (i.e., may not alienate or encumber it and may not allow others to use it). By the acquisition of ownership by the finder, every in rem rights of third parties cease. If the thing is perishable or cannot be maintained, the notary provides for its sale without delay. If the owner comes forward after the sale, the sum received as purchase price shall be paid to him/her. The owner fails to come forward within 1 year from the finding, loses the ownership, or the right to the sum received in connection with the sale. If found thing is of substantial value and the finder does not acquire ownership thereof, the finder is entitled to a fee of reasonable amount if he/she has done everything expectable to have the thing returned to its owner. The finder is entitled to withhold (retain) the thing until his claims for the reimbursement of interim costs, and for the fee is satisfied.

7. Treasure Trove (Section 5:64). Treasure is a valuable thing which has been hidden by unknown persons or the ownership of which has otherwise been forgotten. The finder of treasure is obliged to offer it to the State. If the State does not need it, the thing becomes the property of the finder. If the State does claim the treasure, the finder becomes entitled to a fee proportionate to the value of the thing. If the found thing is classified as protected cultural goods, its ownership belongs to the State.
2.2.4.2. The Derivative Modes Thereof

1. Transfer (Sections 5:38–40). With certain exceptions, ownership can be acquired by transfer only from a transferor who is the owner of the thing (nemo plus iuris):
   - For the acquisition of ownership of movebles, a contract for transfer or other legal title—i.e. the commitment transaction (see above)—is required, and, in that context, the possession of the thing shall also be conveyed by a transfer agreement—i.e. the disposal transaction (see above as well).
   - For the acquisition of title to a real estate, a contract for transfer or other legal title is required, and, in that context, the change of owners shall be registered in the real estate register.

There are some certain exceptions of the Principle of nemo plus iuris, in which the ownership acquisition is allowed from a person other than the owner:
   - Where ownership is acquired (i) in good faith, (ii) in the course of trade, and (iii) for consideration, the transferee acquires ownership by way of transfer even if the transferor was not the thing’s owner; similarly, if the purchase takes place from a seller who enters into the contract in his own name within the framework of legitimate business activities. In these cases, if the acquirer (transferee) acted in good faith in connection with the rights of third parties arising before the time of transfer, these rights cease by the time of transfer.
   - If someone acquires money by way of transfer, becomes owner even if the transferor was not one.
   - If a person lawfully gets securities by way of transfer, acquires ownership regardless of the transferor’s title.

2. Acquisition of Fruits [Section 5:50]. Any person who has an in rem or an in personam right (e.g. usufructuary, or a lessee of a leasehold contract) in respect of a thing of another person, which entitles to take possession of products, produce or progeny (together as: fruits):
   - This entitled one acquires ownership in the fruits by their simple separation, if these had been previously not acquired by him/her. (Lawful possessors also acquire the ownership in the fruits by separation.)
   - But if the entitled person does not possess the fructifying thing from which the fruits originate, becomes owner by taking the possession thereof.

If the right, which entitles for acquiring the ownership of the fruits, ceases before the fruits’ acquisition, the entitled person of these ceased rights may demand for compensation by the owner or by the new holder (i) up to the value of the fruits (ii) within the enrichment of the owner (or of the new holder), and (iii) in proportion to the invested effort, and (iv) up to the extent of the emerged expenses that cannot be recovered from elsewhere.

3. Acquisition of Ownership of Game and Fish [Section 5:53]. Game animals and fisher living in rivers and natural lakes and other useful aquatic animals belong to the properties of the State. The ownership of game animals that were killed or captured or fallen on a hunting ground, acquires the person who is entitled to hunt the specific animal and owns the hunting ground in question. In absence of such hunting right, the game becomes the property of the person who is entitled to hunt the game in question and owns the land where the game migrated from. The ownership of fishes and other utilizable aquatic animals is acquired by the person entitled to exercise the right to fish.

4. Acquisition of Ownership of Processed and Converted Things [Section 5:65]. A person who (i) manufactures a new thing (ii) for him-/herself (iii) in good faith (iv) by processing or converting (v) a thing owned by another, (vi) under the choice by the owner of the manufactured thing:
   - either reimburses the value of the manufactured thing, and, in this case, the rights of third ones cease (a character showing a symptom of originality).
   - or surrenders the ownership of the new thing in return for reimbursement of the value of the invested work; with exception of the situation, in which the value of the work significantly exceeds the value of the manufactured thing—the manufactured thing’s owner, in this case, may demand only the compensation for its value.

If the person that manufactured the original thing—which is called in trade raw material or commodity—has acted in bad faith, the right to choose accrues to the owner of this thing: If the owner chooses to acquire the ownership of the new thing, he/she is obliged to pay compensation, with respect to the act in bad faith, only up to the extent of his/her actual enrichment; and, if so, rights of third persons in the manufactured thing survive, and they proportionally exceed to the new thing as well (a symptom of derivativeness).
If the ownership of the manufactured—converted, processed, as well as merged or combined (see below at Section 5:66)—thing is claimed by neither of the parties, it shall be sold, and the gained price shall be divided among the entitled parties in respect of their share of ownership (see Section 5:67).

5. Acquisition of Ownership of Merged and Combined Things [Section 5:66]. If the things of two or multiple persons are merged or combined in a way that their separation may only be accomplished by inflicting substantial damage or unreasonably high cost, or if these things cannot be accomplished at all, the ownership of the composite or the compound (that is final product) is acquired jointly by the involved persons. The proportion of their share of ownership acts upon the value of the merged or combined things at the time of their transformation.

If the thing(s) transformed by merging or combining is (are) acquired by joint owners, the rights of third parties on the things touched by merger or combination accrue to the ownership shares replacing those things. However, the rights of third ones cease, if the new thing is acquired by a person other than the one who had a right in the original thing merged or combined.

If either of the merged or combined things, with respect to its value, or quality, or economic function, or for any other reason, should be considered as a principal component of the new thing, the owner of the main component has the right to opt either to retain the ownership of the new thing and compensate the other owners, or to surrender the new thing to them for compensation. The person cannot have the right to opt who caused the merger or combination by his/her own act in bad faith (this person can demand only for compensation up to the amount of the actual enrichment of the others). If the ownership of the merged or combined thing is claimed by neither of the parties, it shall be sold, and the gained price shall be divided among the entitled ones with respect to their share of ownership [Section 5:67; see above].

6. Annexation [Section 5:68]. If a person in good faith builds an annex attached to the building owned by another by using own materials, and thereby considerably increases the value of that building, joint ownership of builder and owner emerges in the new building, unless they had an agreement to the contrary. The ownership shares are determined after the value of the whole property and the annexed part. The mentioned values shall be taken into account at the time when annexation was finished. (The provisions on mala fide builders shall also apply to mala fide annexation.)

7. In-Building [Section 5:69]. If a person uses another’s material for building on a land (or into a building), and these materials become permanently attached components (see above) of the land (or of the building), the in-built materials are acquired by the landowner (or the owner of the building), unless they made an agreement to the contrary.

8. Building on Another’s Land [Sections 5:70–71]. If a person builds a structure in good faith on another’s land without any entitlement, the ownership of the building is acquired by the landowner who is bound to reimburse the builder the enrichments gained by this act. The builder can be compelled by court to buy the land at the request of the landowner. The builder acquires the ownership of the land, if the value of the building considerably exceeds that of the land. If the builder acted in bad faith, or, if the landowner protested against the building at a time when the inintegrum restituto would not have caused unreasonably great damage to the builder, the provisions on wrongful building beyond boundaries (see above) are to be applied. By law; the builder is considered acting mala fide, if he/she knew or should have known before the beginning of building works under the case’s circumstances that the building in question infringes on the owner’s rights.

9. Acretion (5:51). The landowner acquires the ownership of everything that has become a part of the land subsequently, except if it belongs under any title to another person. An accretion can be natural or artificial:

- artificial accretions are buildings and other constructions, planted crops, forests, various plantations;
- natural accretions are, however, e.g. natural vegetations, forests, islands in a watercourse, dried or abandoned water-basins, and alluvia (or—most theoretically—a new mountain or land emerged by volcanic eruption).

These rules cannot be applied e.g. upon users of lands building new components on land, or upon river plots being accreted through small river isles (eyots) or through alluvia, or the dried river-basin since these belong to State properties.

10. The Inheritance and the Dissolution of a Legal Person with Succession. The assets of a natural person testator, as whole, entirely devolve upon the heir(s) after the testator’s death (universal succession ipso iure; see detailed in the Law of Succession below). By inheritance, the in toto transfer of negative assets of a person goes in a special
way since the Principle of Liability of Heirs for the Estate’s Debts says that: The heirs are responsible to the creditors of the debts of the estate with the objects and proceeds of the estate. If the estate’s objects or benefits are not in the heir’s possession at the time of claim enforcement against estate, heirs are liable with their other assets within the value of their acquired part from the estate [Section 7:96 § 1].

About dissolution of legal persons with succession—e.g. in the case of business organizations’ transformations—, enquiries can be made via Law of Persons or Company Law (see there, above).

2.2.5. The Joint Ownership and the Condominium

2.2.5.1. Joint Ownership and Legal Relationships of Joint Owners

1. About the Notion. Joint ownership is a specific form of ownership, in which the same thing is owned by two or more joint owners of the specific intangible shares in the jointly owned thing, and the shares are, in doubt, equal. Joint owners can be natural as well as legal persons. Joint ownership takes place through intangible shares in the jointly owned thing produces also a peculiar legal situation between the joint owners, which can be summarised as follows:

- Intangibly shared ownership means that the exercise of theoretically partial (i.e. joint) ownership rights takes place with respect to the whole thing in a theoretical dividedness following the actual share of the joint owner in question; thus partial ownership rights cannot be exercised if the thing is separated in kind—actually, if a thing is divided in kind and is owned by multiple persons in this physically shared way, it just terminates joint ownership because intangible shares are ceased by a division in kind (see Section 5:84 § 1);
- it follows that the ownership right of joint owners is homogeneous, which means that it extends to the whole thing owned jointly and its every benefits and disadvantages but up to the proportion of the actual intangible share of the joint owner;
- joint owners together compose a specific community of rights and duties, therefore, by nature, their legal relationships have two diverse directions:
  - Their internal legal relationships tend to order the relationships, rights, duties, obligations among and towards each other and between community and its member.
  - Their external legal relationships are composed of the relationships according to rights and duties and obligations between the community of joint owners and third, i.e. extraneous persons; it follows then that the act of a single member (joint owner) of the community is considered, with some exceptions, the act of the community.
- Consequently, typical objects of joint ownership are immovables—lands, other real estates, houses, flats etc. —, therefore, the specific rules of real property law and of land trade law have also to be kept in mind with respect to creation, amendment and termination of legal relationships, and in accordance with the rights, duties and obligations, as well as in respect of ownership protection.

2. The Internal Legal Relationships of Joint Owners. Rights, duties, and obligations of joint owners, and nonetheless their relationship to the jointly owned thing, are ordered by law in accordance with their internal legal relationships. Among these, Civil Code regulates the following matters:

- the process of decision making in the matters of common concern by adopting resolutions;
- possession, use, and utilization of the object of joint ownership;
- bearing costs, expenses, obligations and risks of the object of joint ownership;
- termination of joint ownership, which may also touch the legal position of extraneous persons.

Joint owners have the right to vote in the matters of common concern in the proportion of their ownership share. They make their decisions basically by simple majority, unless law prescribes unanimity in matters such as:

- bearing expenses greater than ordinary management or housekeeping;
- transferring the whole ownership of the jointly owned thing;
- encumbering the entire thing owned jointly;
- making any other commitment relating to the entire thing.

Majority decisions can be contested in court by the minority, if the decision:

- infringes the standard of reasonable management,
results in a significant injury to the lawful interests of the opposing minority,

or, if there is disagreement among the joint owners whether a proposed work is inevitably necessary for the preservation and maintenance of the jointly owned thing’s conditions.

Joint owners have the rights to possess and to use theoretically the entire thing in the proportion of their intangible share. These rights may not be exercised to the detriment of rights and lawful interests of other joint owners. It follows then that joint owners can make specific agreements for temporal and/or spatial sharing of the thing’s possession and use. This special agreement may be concluded also by conduct—e.g. if none of the joint owners raises any objection against a new way of exercising the right of possession or use by another co-owner with respect to its new spatial and/or temporal extent.

However, it sometimes occurs that the proportionality of the exercise of such rights factually differs from the intangible share of the joint owner. In this case, the joint owner who exploits more rights than he/she would have according to his/her ownership share, shall pay a fee for the surplus use. Unless it is otherwise indicated by the mentioned agreement of joint owners or the relevant circumstances of the case, contractual services are for consideration (cf. Section 6:61). It follows that a surplus possession or use can only be free of charge otherwise gratuitous, if the parties expressed concluded it in their agreement or if it follows the relevant circumstances (e.g. the parties are close relatives).

On the one hand, all the benefits (commoda) from the joint property are claimed, and, on the other hand, the bearing of all costs and obligations, and nonetheless the liability for all damages (together as incommoda) with respect to the joint property are borne in the proportion of the joint owners’ shares of ownership. It is also true in accordance with the protection of the thing’s conditions; viz. Joint owners are entitled to carry out works that are essential for preserving and maintaining the thing’s conditions. The costs of such investments are borne by all joint owners according to the actual share of ownership. If possible, joint owners shall be notified before the emergence of such costs.

At the request of either of the joint owners, the court may rule on the matters relating to possession, use, or utilization:

- if parties could not make any decision according to these, i.e. if they did not manage to conclude an agreement in this context;
- and with respect to the ownership shares, and the joint owners’ rights and lawful interests,
- and according to the requirements of reasonable management.

Every joint owner may demand the termination of joint ownership; any waiver of this right shall be null and void. The Civil Code contains regulation only for such cases, if the joint owners do not manage to agree properly in the way of termination as between them, thus, if a disagreement occurs. The mandatory rules of terminating joint ownership bind only the courts applying them: Parties may make any agreement for the termination, unless it is not contrary to law. Court shall examine, at request, if termination would fall on an inopportune date, which is either subjectively unsuitable for the parties or objectively inappropriate; if so, termination of joint ownership may not be ordered by court.

There are four different modes of termination of joint ownership, which are: Termination in Kind, Termination for Consideration Paid by a Joint Owner, Termination by Jointly Selling the Thing and Dividing the Price, Termination by Transformation into Condominium. This enumeration means somehow a mandatory sequence, and the conditions of conversion from one mode of termination to another are defined by mandatory rules of Civil Code [Section 5:84]. I shall stress that the court cannot apply any mode of termination, against which all of the joint owners protest. The relevant laws say that:

- Objects of joint ownership shall be divided primarily in kind.
- The objects of joint ownership, or a part thereof, if it is justified with respect to the joint owners’ circumstances, may be given into the ownership of one or more of the joint owners in return for the payment of an appropriate consideration:
  - with the consent of the joint owner acquiring ownership;
  - or without consent, if the joint owner who acquires ownership by the termination resides in the jointly owned real estate, and this way of termination does not harm his/her reasonable interests:
    - the adequate consideration (or, if the thing is sold by auction, the minimum purchase price) shall be determined by court ruling.
• the court either orders the joint owner living in the real estate to be terminated to vacate it, or, if this order infringes the equitable interests of this party, the court shall grant the right of use for him/her in proportion of the actual ownership share; this right of use may, by nature, depreciate the co-owned thing, the effects of such value-decreasing shall be borne by the joint owner who remains in the residence.
• the objects of joint ownership shall be sold, and the price received shall be appropriately divided among the joint owners if:
  ▪ joint ownership cannot otherwise be terminated, or
  ▪ division in kind would cause a significant decrease in value, or
  ▪ division in kind would hinder the thing’s proper use.
• Joint ownership of a real estate may also be terminated by converting it into condominium, if its conditions are satisfied. (If conversion into condominium is ordered by court decision, the bylaws of condominium shall be substituted by the court ruling.)

3. The External Legal Relationships of Joint Owners. According to the joint owners’ rights, duties, obligations, and with respect to the common thing, the following issues requires regulation in the external legal relationships of joint owners:
   - the right of disposition in accordance with ownership,
   - and the protection of joint property.
   Although alienating and encumbering a jointly owned thing as whole, as we saw, needs a unanimous decision of the joint owners, each of them may freely dispose of the own share of ownership, i.e. the right of free alienation, leasing, and encumbrance. This liberty of disposition has, however, some boundaries as well: The formative rights—otherwise known as mightinesses—of third persons that are certain prerogatives such as the right of pre-emption, the right of first refusal for lease, and the right of first refusal for tenancy. The beneficiaries of such rights can be e.g.:
   - by law, some extraneous persons may have such prerogatives against the joint owners or against third persons having no prerogatives (e.g. in case of certain monuments, the State, or, in the case of arable land, a resident or neighbouring farmer);
   - against third persons, joint owners registered in the real estate register has such formative rights, and, if the seller has knowledge about the existence of joint owners not being registered in the real estate register, these unregistered owners also have such rights;
   - joint owners cannot have such mightinesses against each other;
   - the right of pre-emption based on other laws precedes the pre-emption rights of joint owners afforded under Civil Code.

With respect to the ownership share offered for selling, joint owners may exercise their right of pre-emption and their other formative rights mentioned above in proportion to their ownership shares. According to their prerogatives, they have the right to be first on offer for buying the share of another joint owner who aims to sell or lease his/her own share to third parties. If the joint owner selling the own share fails to make an offer first to the other joint owners, the offer of the third party for sale or hire or lease becomes the object of the right of pre-emption etc.: If such offer of an extraneous person is in toto—i.e. the offer for the price or lease charge etc. together with every other clauses—acceptable for a joint owner having an interest to buy or lease the share of another co-owner, the contract in question becomes to be concluded between the joint owners—i.e. between the prerogative’s beneficiary and the seller—with the content offered by the third person. If either of the joint owners accepts the offer for the ownership share in question, the right of pre-emption etc. accrues exclusively to him/her. If there is more than one such joint owner acting on his/her own, the owner has the right to select one.

Any of the joint owners may act independently to protect the joint property as whole. According to this, the tools of protection of property introduced above may be used by any of them with respect to the entire joint property regardless of the ownership share of the joint owner acting towards property protection.

In accordance with possession issues, joint owners are, in most cases, joint possessors at the same time. Therefore, in these cases, joint ownership may be qualified simultaneously as joint possession, too. If so, protection of possession accrues to each co-possessor—i.e. joint owner—in individually, and each of them is entitled to
demand the thing to be rendered available for joint possession; joint possessors are also entitled to protection against each other according to their title [Section 5:5 § 4sq]—viz., with respect either to his/her ownership share or to his/her use rights based on the agreement for sharing the right to use.

2.2.5.2. The Condominium

1. According to the Civil Code [Section 5:85], a condominium is composed of, under the condominium’s bylaws, at least two independent units for residential (or non-residential) purposes in a technically separated building passing into the private ownership of condominium owners, whereas building areas not being the object of private ownership go into the condominium owners’ joint ownership. The share of ownership in the jointly owned parts follows the proportion of the owners’ share in the individual properties. The actual share of common elements of condominium and the individually owned (non-)residential units form together an independent property. The titles to individual and to common share of condominium property may be neither transferred nor encumbered separately from one another.

2. The provisions concerning joint ownership duly apply to condominium properties as well. Special regulations thereof are codified in the Condominium Act (Act CXXXIII of 2003), according to which:

- only in its name, and only by the administration of matters concerning the building’s maintenance—i.e. operation, conservation, renewal—as well as its jointly owned parts, a condominium is entitled to
  • have rights and obligations,
  • sue and be sued autonomously,
  • exercise ownership rights in jointly owned areas of the condominium,
  • bear the costs and risks of the jointly owned parts.
- The condominium’s capacity to bring an action is exercised by its common representative.
- The principal body of a condominium is its general assembly composed of the condominium owners, which all of them may participate in.
- The common matters of condominium are administered by the common representative or the administrative committee (the latter is a parallel institution of the previous one if composed of multiple persons).
- If a condominium includes more than 25 flats, an audit committee shall be elected for management control.
- The legal supervision of the operation of the condominium and its bodies’ operation is conducted by the notary of the municipality, which the condominium is established in.
- Owners of the condominium are liable for the obligations of the entire condominium in the proportion of their share of ownership; this liability is a simple—i.e. not directly enforceable—guarantee.
- Supporting frames, and areas of the building serving security purposes and common purposes of condominium owners belong to the jointly owned parts, even if it is situated in an individual unit.
- A condominium may be established either for an already finished building or for a building under construction or to be construed:
  • a condominium in an already standing building can be established through such intention of the real estate’s joint owners expressed in the bylaws of the condominium;
  • a condominium in a building under construction or to be construed can be established through such intention of the land parcel’s joint owners expressed in the bylaws of the condominium; this is called preliminary establishment that shall be recorded on the title deed of the parcel in the real estate register, and the registration of the condominium can be claimed only after the completion of the construction.
- The major issues laid down in the rules for the organization and operation are as follows:
  • the bodies of the condominium, its power, and its rights and duties,
  • the rules of bearing the common costs.
- Any owner of the condominium is entitled to possess, use, utilise, and dispose the individually owned unit without any infringement of rights and lawful interests of the other owners.
Every owner is entitled to possess and use the objects of joint ownership with no harm of rights and lawful interests of others.

Any owner of the condominium is bound to:

• maintain his/her independent residential or non-residential unit;
• make possible and tolerate that the condominium’s representative enter the independent residential or non-residential unit in accordance with issues concerning the control, fault resolution, and maintenance of the jointly owned properties in an opportune time, and without any unnecessary harm of the tenant;
• inform the common representative about:
  ▪ any planned building (re-)construction in the own unit,
  ▪ any changing in ownership rights in the own unit,
  ▪ the own relevant personal data and that of the tenant, and about the number of people residing in the individually owned unit.

2.3. The Law of Limited Rights In Rem

Limited in rem rights have manifold genres. To depict their common characteristics properly, it seems useful to briefly repeat the various classifications of the complex system of in rem rights’ species that have actuality in respect of a better understanding of the relevant attributes of limited rights in rem (see more detailed above, in the chapter of in rem rights’ genres).

The Civil Code categories and denominates in rem rights as follows: on the one hand, there are the ownership together with particle ownership rights (such as the right of possession, use, utilization, disposition, protection), and, on the other hand, there are the colourful categories and species of limited rights in rem having two main sub-categories, the one of which contains the manifold types of pledges, liens, mortgages etc. (statutory lien, collateral security, possessory lien, mortgages, independent lien, lien on rights, lien on claims, lien on set of assets identified by description, multiple pledge) called altogether the Law of In Rem Security Rights over Assets, and the other of which incorporates the diverse genres of the rights of use (land use right, beneficial interest otherwise known as usufruct, use right, land easements viz. servitudes, right of use for public purposes).

The most important classification of genuine in rem rights forms its categories according to the extent of power upon the thing: complete in rem right entitles to full power (plena potestas) upon the thing, while non-complete in rem rights assure only partial power on a thing. Complete in rem right is called ownership right, which legally enables and protects the beneficiary while fully exploiting the thing. Non-complete otherwise limited in rem rights ensure the beneficiary to exercise either one of the particle ownership rights or some of them in certain combinations. The beneficiary’s limited rights can be restricted by parallel ownership right. A usufructuary has e.g. no right to dispose either of the thing itself or of his/her own right of usufruct but is indeed entitled to assign his/her right to possess, to use or to utilise the thing (see below; cf. Section 5:148 § 1).

Between in rem rights, there is another relevant distinction: whether it is a right in an own thing, or a right in a thing owned by another. The right in the beneficiary’s own thing can be solely and exclusively an ownership right. The category of in rem rights in foreign things meets the class of limited rights in rem.

2.3.1. The Law of In Rem Security Rights over Assets

2.3.1.1. The Legal Nature Thereof

1. The one group of limited in rem rights contains the Rights of Use that entitle the beneficiary to exploit—i.e. to use and/or utilise—the advantageous attributes of a thing’s physical consistency either with the partial or total exclusion of exercise of parallel ownership rights, or without any exclusion of this kind.

2. On the contrary, pledges, liens, mortgages, charges, hypothecations etc. do not encumber things or other assets such as rights, claims, certain parts of a person’s estate through establishing a title for exploitation of the consistency thereof, but these security rights entitle to exploit the value of the encumbered asset with in rem effect, i.e. through total exclusion of enjoyment of rights of owners or beneficiaries either for securing a claim (collateral security
rights) or without such legal purpose (independent security rights).

It shall be stressed well in advance that this field of Law of Rights In Rem can hardly be translated into English legal terminology because Hungarian (and other Continental) notions and English terms of this field are profoundly different. There are merely parallel legal concepts, the conceptual elements of which are also not identical. Therefore, in lack of an equal term, the definition of Hungarian legal institutions by using the English language can merely be issued by the method of circumscription (periphrasis).

This is immediately evidenced by the heading of this very chapter circumscribing a deficient notion of English law that would resume and summarise mortgages, liens, pledges, charges, collateral securities, hypothecations of every kind under a single legal term. The concept of “In Rem Security Rights over Assets” is not synthesised in English law but it seems somewhat capable of describing the legal content of a recapitulatory notion of such colourfully variegated institutions as enumerated above.

A legally obliged party—be it an obligor, or a borrower in a general sense, or another kind of debtor—is liable for the obligation, duty, debt etc. not only with the object of an in rem security right if there is any but with his/her whole estate. However, the debtor's estate as whole can be used as the cover of claims of every creditor offering no privileged status in the ranking of satisfaction for any of them. It is only an in rem security right that grants an exclusive position for the creditor who enjoys such right towards every other claimant, which offers, regardless of others, a possibility to totally withdraw (deprive) the value by enforcement of the right's object with respect to the extent of security right. The reservation of value with in rem effect means that the object (asset) of the security right can only be used for the satisfaction of the beneficiary of that very security right. There are many ways of this kind of special satisfaction of claims secured by such rights (see them detailed below), the common character of which is that its beneficiary has priority in satisfaction as compared with other claimants. The issues below have no further significance with respect to the in rem effect of such security rights:

- whether the owner or other beneficiary of the object of an in rem security right, i.e. for instance a lince, is in fact a debtor of the lienee;
- whether the obliged party of the security has other creditors to whom he/she owes another debt, because security offers priority in satisfaction;
- whether there is another joint debtor of the claim secured by an in rem security right, which joint debtor is not encumbered by such security rights, because the beneficiary of the security right may withdraw (deprive) the object for his/her own satisfaction by enforcement before touching his/her other debtors.

3. In rem security rights have two different major periods of existence, and, within the first one, two minor parts of life, all of which are clearly separated by Civil Code, too:

- the first major part having a static character is called the period of formation, in which the value of the object of security right becomes to be engaged for the purposes of such rights but it cannot yet be withdrawn (deprived) for satisfaction; within this period of existence, the engagement has two minor parts of life, in both of which parties are in a special legal position as compared with the second period of satisfaction (see that below):
  - the first one is called the period of ‘coming into existence’, in which the in rem security right created with an in personam effect becomes ready for establishment in the second phase of an in rem effect;
  - the second one is called the period of ‘establishment’, from which the engagement of the security right’s object has in rem effect, i.e. it has a legal effect towards everyone (erga omnes), and so it becomes ready for satisfaction albeit this phase takes place is the second major period;
- in rem security rights over assets can potentially have also a dynamic phase called the period of satisfaction, in which the value of in rem engaged object can be totally withdrawn (deprived), whether it serves as cover for satisfaction of claims or it does not. This period is merely probable since:
  - in the case of an independent lien, it is not sure, whether the beneficiary of the lien exercises the right of satisfaction;
  - in the case of collateral security rights, the beneficiary of the security right may claim or can get satisfaction from elsewhere, i.e. if the debt of the lienee or pledger is paid by an extraneous person, or it is paid voluntarily by the lienee or pledger from their non-encumbered parts of estate. Paying the consideration
is legally followed by the termination of secured debt, the consequence of which is that the terminated debt’s collateral security rights also cease.

2.3.1.2. Collateral and Independent Types Thereof

The Civil Code [Section 5:86] creates a short definition of the collateral type of in rem security rights over assets as follows: “If the in personam obligor fails to perform the claim secured in rem, the lienor becomes to be entitled to seek satisfaction prior to other claims against the property engaged as the claim’s in rem security. The right to satisfaction cannot be affected by any rights acquired after the engagement as in rem security.” The collateral type of in rem security rights shall be considered as the major type of all genres thereof.

Concerning the economic purposes of the institution, there is another type of liens called “independent lien” [Section 5:100]. The General Rules upon In Rem Security Rights over Assets are designed for the collateral type thereof that is a legal institution created solely for securing claims. Independent lien is not collateral since it exists independently of any claims to be secured. Therefore, the statements of the following chapters are undoubtedly correct only about collateral types of in rem security rights. According to this, merely these lines below contain some observations about the independent lien.

A lien may be established on a real estate property on behalf of a financial institution by engaging the lien’s object to be encumbered only to the amount of a specific sum but not to secure a claim. An independent lien may be transferred to another financial institution in whole or in part, or in instalments. For the purpose of satisfying the lienor, a cancellation of lien is needed: Both lienor and lienee may cancel the independent lien in writing; the notice period is 6 months. Under the same ranking, an independent lien can be converted into a collateral lien securing a claim, and vice versa, if so agreed by the parties in writing and by its registration in the real estate register.

2.3.1.3. The Process of Formation Thereof

As we could see, the first—static—period of existence of in rem security rights is the period of formation. The value of the object of security right becomes engaged for the purposes of lien, mortgage, pledge etc. but it cannot be enforced yet since the right to satisfaction is still not open. There are two minor interior parts within this period during which parties stand in a special legal position as compared to their legal standing within the period of satisfaction.

In the period of ‘coming into existence’, the in rem security right is created with an in personam effect between the parties, therefore, it becomes ready for establishment that will erect its in rem effect. ‘Coming into existence’ necessitates two conditions:

- the first one is the parties’ agreement on the establishment of the actual in rem security right,
- the second one is that the party engaging the object of security right has the right of disposition over the encumbered property. This entitlement is inevitable for the following step of establishment (see the below). According to Section 5:121 of the Civil Code, if a lien is established by the previous beneficiary of the right of disposition over the property encumbered to secure a lien registered in the collateral register, it precedes the lien that was established prior to the mentioned lien, albeit it subsequently came into existence due to the lack of right of disposition.

The period of ‘establishment’ creates for the engagement of the security right’s object an in rem effect, i.e. it has a legal effect towards everyone (erga omnes), therefore, and so it becomes ready for satisfaction. An in rem security right shall be considered established if:

- the parties have already made an agreement upon the security right’s conditions, and, with respect to that content of agreement while having the right of disposition;
- either, in the case of a mortgage type of security right, the security right is registered in the actual register,
- or, in the case of a possessory lien type of security right, i.e. the pledge, the possession of the encumbered property is transferred to the pledgee.

In the case of real estates, mortgages are to be registered in the real estate register, but in the case of movables, rights and claims mortgages shall be registered in the collateral register or other registries of special movables (aircrafts, ships etc). Registration in the real estate register or in other registries can be based
either on the parties’ agreement upon the security right, or upon the lienee’s allowance. In the case of collateral register, either uniquely identified or per circumscription defined objects can be registered in, and, in that case, registration can take place even if the object of security right, at the time of registration, still does not exist or the lienee has no right of disposition at that time.

In the case of a pledge (possessorial lien), the transfer of possession takes place in the above enumerated ways of possession transfer except constitutum possessorium. There are further ways of transfer, too: it may also be satisfied if possession is maintained jointly by pledger and pledgee, or if the thing concerned is safeguarded on their behalf by a third person. In case of cessio vindicationis (see above), when the object is held by a sub possessor (third person), and the transfer of possession take place by conveying the claim for the thing, there is a further requirement needed for the establishment of pledge: the sub possessor shall be notified concerning the pledge.

2.3.1.4. Contracts on Establishing An In Rem Security Right

1. Such agreement contains an arrangement between the parties on encumbering a determined or determinable asset and to secure a certain claim (in the case of an independent lien, the latter condition is lacking). The formal validity of these agreements necessitates its execution in writing. The determination of the object may take place by genre, quantity, or circumscription. Still not existing assets may also be identified as object of an in rem security right, and nonetheless such assets, in the case of which the party engaging assets for encumbrance has yet no right of disposition. The already existing or yet not existing secured claim shall be determined in a way by which it can be doubtless identified, and for that:

- indicating the legal relationship(s), which the claim’s title is based on;
- determining the amount of the claim;
- applying any other tool suitable for the identification.

Under an agreement upon an in rem security right, the party who encumbers his/her property through such security right undertakes the obligation:

- in case of pledges, to transfer the possession of or the control over the pledged property to the creditor;
- in case of mortgages, to grant an approval for the registration of mortgage;
- in case of hypothecated claims, by following the lienor’s choice, either to inform the obligor of a hypothecated claim in writing on having the lien established, or to make a statement thereof and deliver it to the lienor.

2. An agreement of such kind may also be qualified as a consumer contract, if:

- the lienor is a natural person, and
- the object of the security right is not used primarily for professional or business purposes of the lienee, and
- the secured claim does not stem from the lienee’s profession or business operations.

In case of a consumer contract on establishing an in rem security right, the provisions of such a non-consumer contract shall apply with some exceptions such as:

- the object of security right may be:
  - either an individually determined asset owned by the lienee,
  - or an asset to be acquired by lienee from a loan provided by the lienor;
- the determination of the secured claim shall include:
  - either the sum without its additional charges,
  - or the amount limit to which the lienor is entitled to seek satisfaction from the encumbered property.

2.3.1.5. Parties’ Rights and Obligations before Satisfaction

There are three important issues to be mentioned: a) the protection of the value of the object, i.e. that of the encumbered property; b) the right of possession, use and utilization of the tangible object, i.e. that of the pledged or mortgaged property; c) the rights and obligations of the debtor of a hypothecated claim.

Ad a) In case of pledged property, if any loss in value of the pledged property jeopardises the claim’s satisfaction, and the pledger fails to restore the condition of the object of pledge contrary to the creditor’s such request within the prescribed time, or fails to provide adequate replacement or additional guarantee to cover that loss, the pledgee becomes entitled to sell the pledged property on the behalf of object’s owner for preventing further depreciation. If
the pledger or the debtor of the secured claim offers adequate other assets in replacement and this does not endanger the satisfaction, the pledgee is obliged to return the pledged property. The pledger is entitled to use any insurance settlement, compensation or other value received in exchange for the pledged property to restore it, if this does not imperil the secured claim’s satisfaction. The rules upon mortgaged objects’ protection are similarly as that of pledged property. There are, however, some minor differences according to the diverse purpose and nature of the institution. If the mortgagor or a third person is endangering the condition of the mortgaged property, the mortgagor is entitled to exercise the rights the exposed party for eliminating the imminent dangers (cf. Section 6:523). If a depreciation of the mortgaged object perils the claim’s satisfaction, the mortgagor’s rights are similarly as that of the pledger (see above). The mortgagor is entitled—similarly as the pledger—to allocate any value received in exchange for the mortgaged property to restore it.

Ad b) The rights of possession, use and utilization upon pledged properties deeply differ from that of mortgaged objects. The reason for that lies in the major difference between the institutions that the pledger gives the possession of the pledged property to the pledgee, while the mortgagor can hold it for making profits from the object to increase liquidity. Since the pledger gets the pledged property in his/her own possession while obliged to maintain the good condition thereof, the pledger or the debtor of the secured claim is entitled to control the condition and use of the pledged property. On the contrary, the mortgagor is entitled to keep the mortgaged property in his/her possession, use it and utilise it for its intended purpose. The mortgagor, as the pledgee, is obliged to maintain mortgaged property’s good condition. If mortgaged property is defined by circumscription, the mortgagor registered in the collateral register is entitled to process, convert, merge, combine and alienate it within the requirements of prudential management.

Ad c) The debtor of a hypothecated claim is liable to perform to the lienee insofar as an instruction is given that indicates the relevant personal data of the lienor. After that the debtor may perform as instructed. Performance instructions may be sent by the lienor only after the effective date of the right to satisfaction.

2.3.1.6. The Claims Guaranteed Thereby

The purpose of collateral security rights is to strengthen credibility by offering a serious in rem cover for the creditor’s claims emerging from a credit or any other obligation. The Hungarian system is quite flexible since it allows almost every kind of claims to be guaranteed by the many different genres of in rem security rights. However, no in rem security right can be established on claims that cannot be enforced in court. Still, in rem security rights may be established:

- on one or more claims;
- on existing or future claims;
- on conditional or unconditional claims;
- on pecuniary or non-pecuniary claims; in the case of the latter, the security right may guarantee
  - the claim for damages resulting from the failure of satisfaction,
  - as well as other receivables;
- on pecuniary claims of a determinable amount or that of a determinable amount.

There is a significant relationship between the scope of liability with the object of encumbrance and the extent of the claim guaranteed by encumbrance. The scope of liability assumed through encumbered property is adjusted to the size of the claim, for the guarantee of which the property was encumbered. Above the value of the claim as capital, the notion of ‘size of the claim’ incorporates the following associated costs:

- the interests on the claim,
- the costs of the claim’s enforcement,
- the costs of the actual in rem security right’s enforcement,
- and the reasonable costs spent on the encumbered property.

The parties may set a limit up to which the lienor may seek satisfaction from the encumbered property. If so, the security right guarantees the claim and the here enumerated associated costs up to that limit.

If an in rem security right is collateral (not independent), the secured claim’s assignment or transfer of any other kind is followed by the transfer of the security right to the new obligee of the claim. The transferor of the claim shall either surrender the pledged property, or provide the permit for registration of the transfer of the lien. If the
secured claim is only partially transferred, the previous and the new lienor, pledgee, mortgagee etc. receives the same rank for the lien, pledge, mortgage etc. in proportion to their respective claim. By nature, with exception of independent lien, the collateral character of other in rem security rights is verified also by the fact that these encumbering rights may be transferred or encumbered only together with the claim secured thereby. If a claim secured by an in rem security right is encumbered by another in rem security right, a ‘subordinated lien’ is established, which covers the securing in rem right as well as the claim guaranteed thereby.

2.3.1.7. The Objects Thereof

Hungarian Law of In Rem Security Rights is flexible with respect also to the fact that every marketable asset, the value of which is determinable in money, can be the object of an in rem security right. The diverse legal characters of different assets encumbered by such rights implicate also different genres of encumbering in rem security rights. According to this, assets may be the object of in rem security rights—after the colon see the genre of in rem security right, which the actual type of asset can be encumbered with—, be these:

- things, be these
  - either movables: pledge, mortgage,
  - or especially money or securities: only security deposit; briefly about the institution of security deposit (cf. Sections 5:95, 5:123, 5:138):
    - it is stronger in ranking as any other in rem security rights,
    - it offers a so-called right to direct satisfaction, which means that the creditor is entitled to acquire ownership of encumbered property up to the amount of the secured claim by way of unilateral statement addressed to the debtor;
  - or immovables: no pledge but mortgage,
  - or intangible shares of joint ownership: mortgage,
- rights, be these autonomous rights or parts of divisible rights of multiple obligees or beneficiaries: lien;
- claims, be these either whole claims, or parts of divisible claims: lien; or some special claims such as payment account balances, funds available through deposit account contracts, other balances available on account: only security deposit;
- a certain part of a person’s estate, the elements of which shall be determined by circumscription: lien.

The objects of in rem security rights are often such things and rights that are complex and productive or fructiferous. It follows then that these objects may have components, accessories and interim profits, the legal fate of which shall be regulated by private law. According to this, in the case of encumbered things in rem security rights extend to the encumbered thing as well as:

- to its every component;
- in doubt, to every accessory of the encumbered thing;
- to its products, produces, progenies, and other benefits;
- on the contrary, in rem security rights do not encumber the components and accessories and benefits of the encumbered real estate, if:
  - these were separated from the real estate by prudential management,
  - then were alienated and removed from the real estate
  - before the period of satisfaction.

During the existence of encumbrance by in rem security rights, it occurs not infrequently that the object of the actual security right becomes to be substituted by other things or by other valuable assets. In these cases, the objects become to be replaced by other assets, therefore, in rem security rights totally or partially extend to these substitutive assets such as:

- in the case of destruction or depreciation of encumbered property:
  - the received insurance settlement,
  - the received compensation,
  - the received reimbursement,
  - or other value received in exchange for the pledged property to restore,
• as well as any claim thereof;
• in the case of expropriation of encumbered property, the received compensation, as well as the claim thereof;
• in the case of selling the encumbered property to avoid any imminent damages: the received price;
• in the case of selling, within prudential management, an encumbered property registered in the collateral register the income from the sale;
• in the case of processing, conversion, merger, or combination of the encumbered property with other assets by the lienee: the new thing created by these acts;
• in the case of depreciation of encumbered property, if a new or supplementing object is given by the lienee or by the debtor of the secured claim: the newly encumbered property;
• in the case of payment or other assets’ transfer as the performance of either a hypothecated claim or its guarantee: the received payment or other asset.

Frequently occurs also, that an in rem security right is established on more than one object to secure the same claim. This institution is called the multiple pledge, lien etc., which creates a universal security right. Universality is excluded if all encumbered properties are owned by the same person. If the lien or pledge is universal, all objects serve as security for the entire claim. Lienor or pledgee is entitled to determine the order of enforcement of the encumbrance but the right to satisfaction extends only to as many encumbered properties as necessary to provide satisfaction.

2.3.1.8. The Rankings Thereof According to Registration

It occurs many times that a security right is established on more than one object to secure the same claim—not less frequent is the case, if the same property is encumbered by more than one in rem security right. In this case, the lienors can be satisfied in the order of establishment of in rem security rights. The order of security rights on the same property is called ‘rank’ or ‘-ranking’. Ranking can be determined either by law or by agreement. The ranking of liens may be modified with the consent of all parties concerned. If registered, any change in ranking shall be considered effective. The disposition over the rankings may not cause any injury to third party rights registered at the time of such modification. Parallel to the Anglo-Saxon legal institution of floating charge, in case of changes in the encumbered properties registered in the collateral register, if the object of the lien is more than one asset identified by circumscription, the changes in things, rights or claims shall not affect the rank of the lien. The reason for that lies in nature of floating charge, according to which the lien pertains all time to all those assets (things, rights, claims) identified by the detailed circumscription over which the lienor has the right of disposition. It is a special case, if a lien guarantees the acquisition of the property being subject to that very lien. If a lien established to secure a claim either for the purchase price of an encumbered movable, or for the re-payment of a loan provided for the acquisition of the encumbered movable, it shall precede the liens established by the buyer or the debtor previously, if, before the transfer of the encumbered property,
• the lienor notifies of the establishment of lien in writing the previous lienors, whose lien covers the newly encumbered property.

To the benefit of another person or without indicating any beneficiary, the owner of an asset to be encumbered is entitled to have this intention to encumber recorded or registered in the appropriate register by specifying an amount limit of lien the owner wishes to establish. If a lien becomes indeed registered, it shall be ranked consistent with the ranking of the recording or registration of the intention to encumber.

2.3.1.9. The Enforcement Thereof: Exercising the Right to Satisfaction

1. General Provisions on Exercising the Right to Satisfaction. The time, when the secured creditor becomes to be entitled for exercising his/her right to satisfaction by the enforcement of the actual in rem security right, is called the opening of the right to satisfaction. This is a significant point dividing the two major periods of existence of in rem security rights: i.e. that of Formation and Satisfaction. Accordingly, the legal position of parties undergoes a meaningful change, the nature of which shall be summarised in this chapter.
The pledgee’s, lienor’s, mortgagee’s, etc. right to satisfaction opens, when the claim secured by the in rem security right falls due, and default occurs. In the case of an independent lien, the right to satisfaction opens if lien is cancelled following the period of notice (see above).

The exercise of the right to satisfaction may take place in the following ways:

- either by way of judicial enforcement (against customers and in the case of a lien on payment account balances can be enforced only by this way);
- or, at the discretion of the secured creditor who is entitled to switch to a different way of enforcement, by means other than judicial enforcement, i.e. through:
  - the sale of the encumbered property by the secured creditor;
  - the acquisition of the encumbered property by the secured creditor;
  - the enforcement of a hypothecated right or claim.

If the creditor whose claim is guaranteed by an in rem security right, while exercising the right to satisfaction, infringes obligations or duties prescribed in the Civil Code, any person who has a legal interest therein may bring an action before the court to suspend the exercise of the right to satisfaction, or to order the creditor to exercise this right with respect to the conditions determined by court.

2. The Sale of the Encumbered Property by the Secured Creditor. The secured creditor, at least 10 days before the planned transfer, shall send a notification—among others about the planned mode of sale and the place and date of the (public) sale—in writing concerning the intention to sell the encumbered pledged property:

- to the debtor of the in rem security right (i.e. pledger, lienee, mortgagor etc.),
- to the debtor of the secured claim,
- to the persons who have guaranteed the performance of the secured claim’s debtor (guarantor etc.)
- to the creditors of other in rem security rights encumbering the same object.

No prior notification is needed if the encumbered property is perishable, or it is a thing or a right traded on stock exchange.

By nature, the exercise of the right to satisfaction by selling the encumbered property necessitates the acquisition of possession, although the law declares that the failure to take possession cannot hinder the execution of the encumbered property’s sale. Therefore, by the opening of such right to satisfaction, the secured creditor acquires the right to take possession of the encumbered property for the purpose of sale. Without voluntarily transfer of possession, the creditor has the right to request the surrender of the encumbered property, and the debtor is obliged to surrender it within a certain period of time determined by law such as:

- for movables: at least 10 days,
- for real estates: at least 20 days,
- for the full vacation of a residential property: at least 3 months.

The Principle of Reasonable Commercial Practices says that the secured creditor, while selling the encumbered property, shall act in accordance with the requirements of the mentioned Principle, and with respect also to the interest of the pledger, lienee, mortgagor etc., and to that of the debtor of the secured claim as well. Unless proven to the contrary, it shall be presumed that the sale was conducted under the Principle, if:

- the object was sold in stock exchange at a valid stock market price;
- the sale took place under the actual market’s normal terms usually employed.

The rules for the sale determine the following circumstances:

- The secured creditor is entitled to transfer the ownership of the encumbered property instead and on behalf of its owner.
- The encumbered property may be sold:
  - either as it is, i.e. in its original status, or in the status of being processed or converted if that was commercially justifiable;
  - either in private or public;
  - either together or separately if the security right was established on more than one encumbered property.

With no delay, after a successful sale, the secured creditor who executed the sale shall distribute the net incomes—i.e. the received price together with the collected proceeds minus the costs of the sale—among the other secured creditors concerning their rankings and extent of claims, and to pay the remaining amount to the debtor of the in rem security right.
3. Acquisition of the Encumbered Property by the Secured Creditor. After the opening of the right to satisfaction, the secured creditor may offer to the debtor of security right that he/she accepts the ownership of the encumbered property in satisfaction of the secured claim in whole or in part.

Among others, the offer shall specify the parties, the object, the secured claim, and the percentage of cover reached by the acquired ownership. The creditor is similarly obliged for a prior notification as in the case of sale of encumbered property (see above). The persons to be notified may object to the offer if it is considered to jeopardise satisfaction of their secured claim.

If the offer is accepted in writing by the debtor within 20 days from the date of receipt thereof, and no objection is made within the same period of time, creditor and debtor enters into a sales contract. With respect to the contract, the debtor is obliged to the transfer of possession, or to make out an allowance for the registration of ownership. By transfer of ownership, the secured claim ceases (in part or in whole).

The Prohibition of 'Lex Commissoria' is a living institution also in the Hungarian private law. According to this, any agreement concluded for transferring ownership of the encumbered property to the secured creditor at the time of the satisfaction right's opening shall be null and void.

4. The Enforcement of Hypothecated Intangible Assets. If the object of a mortgage is a claim or a right or a debt instrument, the mortgagee may give an instruction for performance to the debtor of the claim etc. (mortgagor), and, after the claim has fallen due, is entitled to enforce the claim against the debtor in place of the original creditor of the secured claim.

5. Basic Rules of Civil Procedures. The Priority of Satisfaction is guaranteed not only by Substantive Private Law but also by the Law of Civil Procedures. Two acts incorporate the major guarantees thereof: a) the Act LIII of 1994 on Judicial Enforcement (hereinafter AJE), and b) the Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings (from now on: ABLP). I shall stress that the major way of enforcement of in rem security rights is that of Judicial Enforcement. In this subchapter, since our textbook concerns substantive law, only the cornerstones of the regulation shall be mentioned.

Ad a) If the debtor of the in rem security right is undergoing judicial enforcement covering the encumbered asset as well, from the time of seizure of asset, the secured creditor shall not be entitled to exercise the right to satisfaction outside the judicial enforcement procedure, and shall be able to seek satisfaction solely by way of judicial enforcement [Section 4/A of AJE].

The opening of the right to satisfaction is declared by the court of origin for authorizing enforcement upon request. After declaration, if legal grounds and amount of the secured claim are not contested, the court permits the secured creditor's direct involvement in the enforcement procedure. The opening can be declared on the ground of the encumbered asset's seizure in enforcement procedure unless secured creditor and debtor are relatives of each other [Section 114/A of AJE].

According to Section 165 of AJE, if the proceeds of enforcement are insufficient to cover all claims, the priority order of satisfaction shall be the following based on the legal title of claims: 1. child support; 2. other form of statutory maintenance (alimonies); 3. employee's wages and other emoluments construed as such; 4. civil claims caused by a criminal offense; 5. sums payable to the State established by judgment against debtor in criminal, penal enforcement or misdemeanour proceedings; 6. tax and social security claims and other outstanding public dues; 7. other claims etc.

The amount received from the sale of an encumbered property shall be used primarily for the satisfaction of the claim secured by an in rem security right [Section 169 of AJE]. With respect to the priority order above, this rule shall be interpreted as the ranking of in rem secured claims is preceded by 6 other kinds of items (!).

Ad b) The secured creditor is entitled to exercise the right to satisfaction by the enforcement of in rem security right only within the framework of bankruptcy or liquidation proceedings [Section 4/A of ABLP]:

- in case of bankruptcy proceedings, from the time the notice of bankruptcy or moratorium is published;
- in case of liquidation proceedings: before ordering liquidation, from the time of receipt of the court ruling on permitting moratorium, or after ordering liquidation, from the time the liquidation order is published.

The economic operator's debts shall be satisfied from its assets that are subject to liquidation in the following order [Section 57 of ABLP]:

- liquidation costs in the following priority order:
  - wages and other non-salary compensations payable by the debtor,
• costs of rational termination of the debtor’s business operations,
• verified costs of sale of assets and that of claims’ enforcement,
• assistance received from the wage guarantee account of the National Employment Fund, charged to the debtor;
• court costs and the costs of regulatory proceedings concerning liquidation,
• costs of safeguarding of the debtor’s documents,
• liquidator’s fee;

– after paying all of the above enumerated liquidation costs, the part of a claim secured by in rem security right shall be satisfied, which were not satisfied according to Section 49/D of ABLP, which says that the liquidator shall deduct the following items, i.e. only the sum remaining after these deductions shall be used to satisfy the claim itself as principal, interest and other charges (!), if the security right was filed prior to the opening of liquidation proceedings:
• the justified costs of works ordered by administrative decision required for fixing up the encumbered property if it endangers lives and properties,
• the costs of seeking restitution by lawsuits, and of safeguarding and sale,
• taxes due after the time of the opening of liquidation proceedings,
• if claim is encumbered, the costs of the claim’s recovery etc.

2.3.1.10. The Termination Thereof

1. General Grounds for Termination. According to the many economic purposes and accordingly manifold legal contents of the various genres of in rem security rights, there are numerous grounds for the termination thereof, the one part of which terminates every kind of security rights (general ground), the other part of which ceases only certain genres thereof (special grounds).

The general grounds for the termination of liens, mortgages, pledges, security deposits, hypothecations, charges etc. are as follows:
– the secured creditor waives the actual security right and returns the pledged property to the pledger or if the mortgage is cancelled from the register;
– the encumbered property is destroyed, or the encumbered right or claim ceases without its replacement;
– the secured claim ceases, but security right remains in force for guaranteeing the recovery claim accruing either to the debtor of the secured claim or to the debtor of security right, or to any extraneous person who has satisfied the claim;
– any legal relationship being capable of resulting in a secured claim no longer exists;
– the secured claim lapses (cf. below by pledge);
– the secured creditor sells the encumbered property as exercising satisfaction,
– the secured creditor acquires ownership of the encumbered property while exercising the right to satisfaction;
– the same person becomes debtor and creditor of the same in rem security right; however, the collateral security rights remain in force to guarantee the claim;
– the only claim secured by the actual in rem security right was transferred with the proviso of expressed exclusion of the security right’s simultaneous transfer;
– in the cases of unencumbered acquisitions such as:
  • the acquisition of ownership of encumbered asset in good faith in the course of trade for consideration: the transferee acquires unencumbered ownership, right or claim registered in the collateral register;
  • the encumbered asset is sold for protecting the in rem security collateral, i.e. the financial cover of the value of the actual encumbered asset: the buyer acquires unencumbered ownership, right or claim.

2. Some Special Grounds for Termination. The special grounds for termination cease only one or a few genres of in rem security rights. It is excluded that such grounds generally terminate every kind of security rights. Let us introduce the case of pledge (possessory lien). The pledge ceases if:
– the pledgee loses possession of the pledged property, except when brings an action in rem or a possessory action without delay;
2.3.2. The Law of Rights of Use

Well in advance, I shall repeatedly stress that there are three legally different notions having similar grammatical appearance. The notion of “Rights of Use” having only plural form shapes, adjacent to in rem security rights over assets, a major class of limited rights in rem incorporating rights that entitle the beneficiary to exploit the advantageous attributes of a thing’s physical consistency. It is, however, not equal with the concept of “Right of Use” used in singular, which is a particle right of the “Right of Ownership”. The third concept is called “Use Right” that is also an autonomous type of right, and a subgenre of “Rights of Use”. The most important classification of genuine in rem rights forms its categories according to the extent of power upon the thing in addition to the complete in rem right entitling to full power upon the thing, non-complete in rem rights assure only partial power. Complete in rem right is called ownership right, which legally enables and protects the beneficiary while fully exploiting the thing. Non-complete otherwise limited in rem rights ensure the beneficiary to exercise either one of the particle ownership rights or some of them in certain combinations. The beneficiary’s limited rights can be restricted by the parallel ownership right.

Between in rem rights, there is another relevant distinction: whether it is a right in an own thing, or a right in a thing owned by another. The right in the beneficiary’s own thing can be solely and exclusively an ownership right. The category of in rem rights in foreign things meets the class of limited rights in rem.

The group the Rights of Use entitles the beneficiaries to exploit—i.e. to use and/or utilise—the advantageous attributes of a thing’s physical consistency either with partial or total exclusion of exercise of parallel ownership rights, or without any exclusion of this kind.

2.3.2.1. Diverse Types of Beneficial Interests (Usufructs)

1. Legal Nature and Significance Thereof. Beneficial Interest—otherwise known after its Roman Law notion as Usufruct—is the most meaningful Right of Use, and, nonetheless, alongside of in rem security rights over assets, the most significant limited right in rem with respect to the economic and social importance thereof. This significance is clearly showed by the cornerstone of the private law regulation thereof drawing the legal nature of the institute:
   - It is no wonder then that this right of use may exist in every kind of marketable assets, the value of which is determinable in money, i.e. either a thing, be it a non-fruitful (regular type of usufruct) or fructuous (irregular type thereof) tangible, or even a right or a claim (special type of usufruct).
   - The significance of beneficial interest is mirrored also in the fact that, with respect to the right of possession, use, and utilization, it grants more power to the beneficiary as ownership does. This means that such rights are exclusive rights, according to which the beneficiary may exclude the owner’s parallel exercise of right of possession, use, and utilization since beneficial interest is the stronger one, albeit it grants no right of disposition because this particle right of ownership remains in the power of the owner. In accordance with this, the beneficiary may transfer neither the object nor the beneficial interest, although is entitled to assign the exercise of the particle rights of beneficial interest (detailed see below).
   - The other important character of strength is that beneficial interest remains even if ownership of its object is transferred; the encumbrance survives the transfer.

The legal title of a beneficial interest may be based either on law or on agreement. According to the order of ranking, the stronger right is that based on law (cf. especially in the Law of Succession: Section 7:51 § 2; Section 7:58 § 1 Point a); Section 7:69—detailed see below).

2. Regular Beneficial Interest in Things [Sections 5:146–5:155]. Every kind of beneficial interests—be it
regular, irregular, or special—enters into effect when a contract or other title is executed, and the possession of the object, i.e. thing, is transferred; furthermore, beneficial interest shall be registered in the real estate register, if it encumbers a real estate or a registered right.

A beneficial interest in real estate based on the law shall also be registered, but, in the absence thereof, it is enforceable against those who acquired in bad faith or gratuitously. Beneficial interest extends only to those interim proceedings of the object, which have arisen according to prudential management.

So far as the subject of the right is concerned, beneficial interest is granted to natural persons for a limited period of time, which cannot exceed its beneficiary’s lifetime; if beneficial interest is granted to a legal person, its duration may not exceed 50 years, even it was established for an unspecified period of time.

The rights and obligations of the beneficiary are the followings:

- The beneficiary is entitled to possess, use, utilise, and to collect the proceeds of a thing owned by another.
- The beneficiary does not have the right to dispose, and without such right neither the transfer of object nor that of the beneficial interest may be executed.
- However, the beneficiary has the right to assign the exercise of the particle rights of beneficial interest (viz. possession, use, utilization) both gratuitously and for a consideration as well. The latter is possible only if the owner does not demand to exercise the mentioned particle rights under same conditions.
- The beneficiary is entitled to change the economic function of the object without the owner’s consent, or may convert it or considerably alter it, if a contrarious act would be in contradiction to the requirements of prudential management.
- The beneficiary is obliged to act in line with the rules of prudential management while exercising the right, and is obliged as well:
  - to finance the costs of the object’s maintenance except extraordinary costs;
  - to pay for the costs of the object’s maintenance and utilisation in the case where the owner has the right to undertake such maintenance, but fails to do so as required by prudential management.
- to request adequate guarantees, if the beneficiary acts against the owner’s unsuccessful protest as follows:
  - improperly uses the object,
  - causes damages in the object,
  - unlawfully alters the object’s function,
  - imperils the object’s return after the right’s termination.
- The beneficiary is liable for damages to the thing (non-contractual liability), but not liable for reimbursing the regular depreciation resulting from the use of the object for its intended purpose.

As far as the rights and duties of the owner are concerned, he/she is entitled to:

- exercise the particle ownership rights of possession, use, and utilization so far as the beneficiary does not want to exercise them;
- inspect periodically the exercise of the right;
- demand adequate guarantees, if the beneficiary acts against the owner’s unsuccessful protest as follows:
  - if the owner does not restore the thing, the beneficial interest ceases;
• if the owner restores the thing, the beneficial interest becomes re-established, and the owner is entitled to request a limitation of rights in proportion to the emerged costs;
• if the object is replaced by another thing or claim, the beneficial interest extends thereto.

The beneficial interest is terminated if:
- the term fixed by law or agreement expires,
- the beneficiary’s dies or dissolves without succession,
- the beneficiary acquires ownership of the object,
- the beneficiary sends a legal statement of waiver to the owner (in case of real estates for removing the right from the actual register).

3. Irregular Beneficial Interest [Section 5:151]. The beneficial interest is called irregular if the object is fruitful and the right extends also to the enjoyment of the fruits and other profits thereof. According to this, the beneficiary of an irregular right, to an extent justified by prudential management, is entitled to dispose of inherently expendable objects, business equipment, livestock, stocks of goods and money existing at the time of establishment. When the beneficial right is terminated, the beneficiary is obliged to replace the mentioned things, or to reimburse the value thereof, if replacement is not possible.

4. Special Beneficial Interest in Rights and Claims [Sections 5:156–5:158]. Concerning the special beneficial interest in profitable rights and claims, the provisions pertaining to the beneficial interest in things shall properly apply. Some special rules shall be enumerated as follows:
- the beneficiary’s consent is required for cancelling the encumbered right or claim;
- the beneficiary of the beneficial interest in a claim is entitled to enforce the claim, and, if the creditor’s waiver is required for maturity, to exercise the creditor’s right to waive;
- the beneficiary is liable for the enforcement of the receivables in respect of the creditor according to the principles of non-contractual liability;
- other acts of the beneficiary relating to the claim are null and void;
- at the time of performance by the claim’s debtor, the beneficiary of the claim acquires the object of service, while the beneficiary of the beneficial interest in the claim acquires beneficial interest in the service’s object.

2.3.2.2. Land Easements (Predial Servitudes)

1. The Definition Thereof. The Civil Code in its Section 5:160 § 1 defines the notion of land easement, which alone cannot be subject to transfer, as follows: Upon land easement, the possessor of a real estate called dominant tenement is entitled to use another person’s real estate called servient tenement to a specific extent needed for a proper exercise of the following rights of the dominant tenement to:
- pass (e.g. if a piece of land is not connected to public road, neighbours shall tolerate the possessor of dominant tenement to pass through their land);
- install water lines or drainage,
- construe a basement,
- fix aerial lines,
- make an abutment,
- or for other useful purposes for the benefit of the dominant tenement,
- or to demand the possessor of servient tenement to refrain from rightful conducts.

2. The Establishment Thereof. Land easements can be established either by law (see below the right of use for public interest) or by agreement or by unilateral legal statement or by other legal facts (e.g. by a special adverse possession):
- If by agreement, easement enters into effect when a contract or other title is executed, and the possession of the object, i.e. thing, is transferred; furthermore, it shall be registered in the real estate register.
- Easement may also be created by the owner of a real estate to his/her own benefit by a unilateral statement.
- The possessor of a real estate (dominant) obtains land easement by adverse possession, if the possessor of the other real estate (servient) has not protested against its use for 15 years. The exercise of a right allowed as favour or for a certain period of time cannot result in a successful adverse possession.

3. The Exercise Thereof. Exercising easement shall not result in unnecessary harm to the rights of others, especially
to the servient tenement. If exercise involves the use of any accessories or components of the encumbered real estate, the costs of maintenance shall be borne by both parties in proportion of the factual use thereof.

4. The Extinction Thereof. Land easements can be extinguished by court, and by a so-called ‘negative’ adverse possession, and by legal act as well:

– the court terminates, restricts or suspends easement if it is no longer required for a proper use of the real property by the possessor of dominant tenement;
– ‘negative’ adverse possession results in the termination of a right, not in the establishment thereof; according to this, it means that easement becomes terminated if the possessor of dominant tenement, without any hindrance, has not exercised the easement for 15 years, and if he/she has endured the hindrance of exercising it for the said period of time
– easement may also be terminated by the waiver of the dominant tenement’s owner (not the possessor thereof!) addressed to the servient tenement’s owner (also not the possessor thereof!) in writing, and the removal of easement from the real estate register is also necessitated.

2.3.2.3. Other Rights of Use

1. Use Right for Private Purposes [Section 5:159]. Persons entitled to the use right for private purposes may use a thing and collect its proceeds up to an extent not exceeding the own needs and the needs of the own family living in the same household. The exercise of this right cannot be assigned to others.

2. Land Use Right [Section 5:145]. Land use right is a special and specific legal construction since it surfaces only if ownership of land and building construed thereon are separated.

The speciality and specificity thereof is issued by the fact that land and building generally share the same legal fate because of the old legal principle according to which “ownership of a building accrues to the owner of the land” (see NHCC Section 5:18 § 1). This is the Principle of “aedificium solo cedit”, which originally appeared in a constitution of Diocletian & Maximian in 290 AD as “aedificia quae alieno loco imponuntur solo cedant” (see in C. 8105).

There are many occasions in which the ownership of land and building thereon are divided: some of them are based on law, some on agreement. The source of establishment is the regulation of law in the cases as follows:

– in the case of a condominium, the law says in NHCC’s Section 5:85 that if the land on which the building stands does not belong to the joint ownership, the condominium owners are entitled by law to have land use right;
– so far as Section 5:145 § 1 is concerned, if the ownership of land and building thereon belongs to different persons, the owner of the building, until it is standing, shall have the right to use the land for a proper use of the building; in this case, the owner of the building entitled to use the land
  • is entitled to enjoy the land’s benefits in proportion of his/her land use right necessitated for the enjoyment of the building’s ownership within the measure of its intended purpose,
  • and, therefore (‘cuius commoda eius incommoda’, see above many times), is obliged to bear the costs of the land’s maintenance also within the afore mentioned measure.

There are two more possibilities for dividing the legal positions either by unilateral legal statement or agreement

– at the discretion of the owner of the real estate, the building and the land on which it stands may also be registered as separate entries in the real estate register.
– ownership of building accrues to the owner of the land, unless there is a contrary agreement between building-owner and landowner;
  • if the landowner and the owner of the building made an agreement for regulating their rights and obligations relating to the construction of the building and the use of the land, the agreement is effective with respect to third parties if it was recorded in the real estate register;
  • the mentioned parties may enter into an agreement for establishing a right to consent for the landowner if the owner of the building aims to sell or encumber the building; if the sale or encumbrance does not risk the fulfillment of the obligations of the building’s owner, he/she may demand the landowner to give consent.
3. Right of Use for Public Purposes [Section 5:164]. For public interest, and, to the benefit of persons determined by law, and for a proportional compensation, land easement and other rights of use may be imposed upon a real estate by the decision of an authority. Damages resulting from such authoritative establishment of right of use shall be compensated according to the provisions on indemnification for expropriation.

2.4. The Law of Public Registers of Rights In Rem

Among other Principles of Law of Rights In Rem, the Principle of Transparent Openness guarantees social and economic transparency applied according to In Rem Legal Relationships. The Principle is practically assured and executed by the public registers: The Real Estate Register, the Collateral Register, the Aircraft Register, the Ship Register, etc., which authentically contain the relevant data e.g. of former and recent entitled persons, of the object of the actual right, and of the certain right's genre, type, contents, temporal extent and establishment.

2.4.1. The Real Estate Register: Basic Notions and Principles

2.4.1.1. The Legal Regulation, Definition, and Basic Notions Thereof

1. Legal Regulation. The most important legal sources of Real Estate Register and Registration are a Part of the Civil Code, an Act and a Ministerial Decree:
   - the Fourth Part of the Civil Code's Fifth Book;
   - Act CXLI of 1997 on Real Estate Registration (hereinafter: ARER);
   - and the Decree of the Minister of Agriculture and Rural Development No. 109 (29 December 1999) on the execution of ARER (hereinafter: DARER).

2. Definition by Law. The Civil Code [Section 5:165] defines the notion of Real Estate Register (hereinafter: RER) as follows: “The real estate register is an authentic public containing rights in real estate properties, legally significant facts, and legally determined data of real estates and registered persons”.

3. The Content of RER. According to ARER [Section 2], the RER contains:
   - on the one hand, separately for each municipality, the data and information specified by this Act for every real estate property in the country, and the rights in real estate properties and facts of significance for legal purposes;
   - and, on the other hand RER also contains the personal identification data and address of each person registered therein, which are prescribed by this Act as necessary for registration purposes;
   - additional rights and facts, other than the ones defined by ARER, may be entered in real estate records only if it is prescribed by law.

4. Independent Immovables. The ARER [Section 12] determines, which kind of immovables are qualified by law as independent, these are as follows: land parcels, buildings, cellars, underground garages and other construction works, condominium units (flats) and non-residential areas, such units in co-operative buildings etc.

5. Rights to Be Registered in RER. Rights are to be registered but facts are to be recorded into the RER. The ARER [Section 16] orders the following property-related rights, and beneficiaries thereof to be registered:
   - ownership rights,
   - in case of state-owned real estates, the organization exercising the State's ownership rights and asset management rights,
   - permanent right of use for members of housing co-operatives, land use right in the base of agreement or court decision, usufruct, use right, easement rights, easement and utilization rights in public interest as prescribed by law;
   - right of first refusal, right of re-purchase, option to buy, right to sell,
   - right of support, life annuity,
   - mortgages, and
   - the right to carry-out a judicial enforcement.

6. Facts to Be Recorded in RER. According to Civil Code [Section 5:179 § 1], recording means the registrative indication of legally defined significant facts concerning registered rights. According to ARER [Section 17], solely the following property-related facts may be recorded in the RER:
– an indication if the right-holder of record is a minor or an incapacitated;

– an indication if the right-holder of record is undergoing liquidation, dissolution, or debt consolidation procedures;

– commencement of proceedings of: expropriation, parcel reconfiguration, land survey, mapping, or of land classification procedures;

– remedies lodged against a resolution of the real estate supervisory authority;

– legal status of the immovable, construction and demolition of the building, the qualification of being national or historical monument;

– suspension of RER-proceedings;

– the extent and nature of permanent environmental damage;

– restriction of ownership title and construction-related restrictions based on a court decision, and restrictions relating to the right of disposition in the base of contract or testamentary disposition, or court decision;

– scheduling of an auction or public offering;

– attachment, sequestration, and the freezing of assets;

– sale with retention of title;

– the approval or amendment of the bylaws of condominiums;

– submission of a contract for landownership transfer and many others.

7. Recording of Legal Actions. The ARER orders (Sec. 64) that the court, upon request, issues a provisionally enforceable ruling to the real estate supervisory authority for registration of the fact of bringing actions as follows:

– actions for cancellation or correction;

– actions concerning the ownership of a real estate;

– actions for the termination of joint ownership;

– actions concerning property rights in matrimonial property regime;

– actions for the enforcement of the right to satisfaction with respect to an in rem security right over real estate;

– actions for correction concerning boundaries and size of a real estate.

8. Sections of RER. According to ARER [Section 18], a certain real estate registration database shall consist of the following sections:

– the title deed that can be displayed in a readable form,

– the database of deleted entries,

– the state real estate mapping databank,

– the document archives,

– and the analogue and digital archived cartographic data.

9. The Legal Status of the Immovable. According to DARER [Section 39/A], among others, the following legal statuses of real estate properties may be recorded in the RER: condominium, co-operative house, mining site, monument or monumental area, archaeological site, farmstead, estate centre, protected or natural area etc.

10. Agricultural Sectors and Rezoned Areas. As agricultural sectors, the RER knows i.a. the following types as facts to be recorded in (cf. DARER Sections 40–50): arable land, grassland, vineyard, garden, orchard, reed-field, forest, wooded area, fish pond, and the so-called rezoned areas taken out of cultivation—such as e.g. the built-up and the undeveloped area of the urban zone not larger than 1 hectare of extent.

2.4.1.2. The Legal Nature Thereof

1. Prime Applicability of RER-data. In the proceedings of RER-authorities, the data shown in the RER and the boundaries indicated in the map shall be construed as authoritative. The burden of proof lies with that party who claims that a RER-data is incorrect or untrue. If the size of a real estate indicated in RER differs from the size to be determined in the base of the boundaries marked in the map, the latter shall be applied.

2. Legal Position of Persons Acquiring Non-Registered Rights. A person acquiring a right not entered in the RER may not enforce the non-registered right against a registered party acting in good faith. A right that is not registered in the RER may not be enforced against a party who acquired also a non-registered right in good faith and for consideration.

3. The Protective Effect of the RER. The person who holds a right under substantive law may bring action for
cancellation, within 6 months from the date of delivery of the resolution on the originally invalid entry, on the ground of an unlawful entry or an entry that became subsequently incorrect, against third parties who acquired right in good faith for consideration while relying on the completeness and probity of that entry. If no delivery took place, the action for cancellation may be brought within a period of 3 years from the effective date of the entry. The passing of these time limits results the termination of right.

2.4.1.3. The Basic Principles Thereof

1. The Principle of Publicity and Open Access. According to the Principle of Publicity and Open Access, the RER is open to public. Therefore, anyone has the right for an unlimited access to the data of title deeds and that of maps in the RER with exception of personal data under special protection. Thus, open access data may be free inspected, and, about these data, notes may be made, and certified copies and certificates may be requested. The documents, which the data of entries, records and pending registrations are based on, can also be researched if the applicant can verify that
   - the parties with respect to whom the document contains rights and obligations gave their consent to the access to the documents, or
   - the access is necessary for the purpose of enforcing legitimate rights or for the performance of an obligation based on law or administrative decision.

2. The Principle of Documentation. Rights and facts of legal significance may be registered and recorded, and data may be updated in the RER solely in the base of:
   - documents prescribed by law, such as
     - private documents countersigned by lawyer,
     - authentic notarial instruments,
   - binding resolutions of authorities;
   - and court decisions.

3. The Principle of Registration. The creation, amendment and termination of rights and entitlements defined by law shall be considered effective when registered on the title deed in RER. Solely such rights may be registered in RER, the registration of which is permitted by law. Ownership acquisition based on transfer arises through the registration of the entry based on the deed of subrogation (transfer of right). Similarly, asset management rights, mortgages, and the rights of use—such as land use rights, beneficial interests, use rights, land easements etc.—based on contracts arise through the registration of the entry based on a deed on creating rights. If the recording of significant facts defined by law, and if the registration of rights granted by law, fail, it has no impact on the legal effect thereof. In case of failure to register rights defined by law, and to record significant facts defined by law, the right-holder cannot enforce them against a third person of good faith.

The legal effects of registration of rights and entitlements defined by law, and that of the recording of significant facts defined by law are as follows:
   - the restraint of any future acquisition of rights,
   - the transformation of future acquisitions from unconditional to conditional,
   - the right’s acquisition, change therein, termination and enforceability thereof take effect directly and retroactively, i.e. going back to the date of submission of the application for registration.

The bases and conditions of registration and deletion are the followings: the verification of grounds for subrogation; the allowance of the already registered holder of right (the provisions concerning the conclusion and validity of contracts shall also apply to the allowance of registration and deletion of rights); court ruling, administrative decision.

The ground for rectification of RER-entries is that if the entry does not coincide with the content of document in the base of which the entry was registered or recorded. The entry may be rectified either by deletion or by correction the incorrect entry or record:
   - deletion can solely be based on the invalidity or subsequent inappropriateness of the transaction which served as the ground of the entry or record;
   - correction takes place in case of any errors in names, numbers or calculations, any other typing errors and erroneous descriptions in entries or records the RER-authority makes the correction within its own initiative.
4. The Principle of Ranking. Ranking means the mandatory sequence of registered rights. The determination of ranking follows the effective dates of the entry's registration, therefore:
- registered rights entering into effect at the same time have the same ranking;
- the sequence of applications’ registration received at the same time, and the ranking of registered and recorded entries are determined by
  - the date of the document underlying registration, or
  - the date when the document was drawn up, or
  - the date when document was countersigned if countersigning is required.

5. The Principle of Authenticity. The Principle of Authenticity has two issues:
- the first one is that the RER authentically proves the existence of registered rights and recorded facts;
- the second one following the first issue says that if a right or a fact has been registered or recorded or if an application has been provisionally registered in the RER, no-one can refer to the lack of knowledge concerning the right or fact in question, viz. ignorance does not constitute any excuse.

6. The Principle of Completeness. In the base of rights registered and facts recorded in the RER, it is to be presumed, until the contrary has been proven, that such registered rights and recorded facts exist, and pertain to the holder thereof. Similarly, unless proven to the contrary, rights or facts deleted from RER shall be presumed not to exist. These are the general consequences of this Principle. However, there is a special issue, too, which is the very important rule upon the protection of ownership acquired in good faith and for consideration. According to this, the content of the RER shall be considered being true in favour of a party acquiring in good faith and for consideration even if the content differs from the actual substantive legal status. This protection cannot be demanded towards a party who has brought an action against the protected one for having an entry deleted.

7. The Principle of Disposition. Generally speaking about civil procedure, since parties may dispose freely of their actionable rights, their motions and legal statements are binding upon the court—and upon other authorities carrying out proceedings. This general procedural issue, with respect especially to real estate registration proceedings, means that the RER-authority cannot go beyond the limits of the applicant’s requests. As the ARER’s Section 6 orders, this Principle has two sides:
- on the one hand, with some minor exceptions, registration or recording proceedings shall commence upon the client’s request or the order of an authority;
- and, on the other hand, solely those rights and facts of legal significance may be registered and recorded in the RER which are designated in the application or in the order of authority.

2.4.2. The Collateral Register

1. Basic Principles Thereof. The collateral register (henceforth: CR) contains the mortgages established on non-registered movables, rights and claims separately for each mortgagor, as well as other security rights. According to the Principle of Open Accessibility, the CR is accessible to public on the internet free of charge, and without personal identification.

2. The Contents Thereof. The CR contains the following information for each registered mortgage: the contents of the application for registration, the time of registration, and the entry number.

3. The Bases of the CR. Registering, modifying and deleting entries takes place by means of a standard electronic form based on a written statement made on the internet website of the CR, which is to be made out by the mortgagor and/or the mortgagor, without any examination of the statement’s contents but after an electronic identification of the acting person.

4. The Registration and Deletion of a Mortgage. A statement for registration of a mortgage can be made by the mortgagor or mortgagor:
- if by the mortgagor, the mortgage can be registered on the strength of that statement if the mortgagor consented;
- if by the mortgagor, mortgage may be registered on the strength solely of that statement, i.e. there is, by saine raison, no need of the other party’s consent. Mutatis mutandis, a statement for cancellation of a mortgage can be made by both of the parties:
- if by mortgagee, the mortgage, by natural logic, may be cancelled with respect solely to that statement,
if by mortgagor, the mortgage may be cancelled in the base of that statement plus if the mortgagee:

- gave a consent for the cancellation, or
- did not make a statement for maintaining the entry within a period of 30 days from the date of the mortgagor’s statement for cancellation.
CHAPTERS FROM THE LAW OF OBLIGATIONS

As to possibilities regarding the extent of the volume, in this part, a selection of topics having greater significance from the enormous Sixth Book of the Civil Code about the Law of Obligations is made. This part was elaborated by the whole team of the Department of Private Law, and the chapters have their own author(s). Therefore, the authors are represented before the headings of each autonomous part.
1. The *most significant attributes* of the obligation are as follows: the *enforceability* of the behaviour undertaken as the content of the obligation (Grosschmid), the *correlativeness* of the legal situation (Szládít), the *defence of the creditors’ interests*—both parties are creditors for the opposite services at the same time (Fürst); it is a *legal relationship between certain parties*, the *object* of which is a *valuable service*, and, in which demands and liabilities are *unitary* (Försi).

According to all these, the obligation is a *relative legal relationship between certain parties*, by which the *beneficiary is entitled to demand the performance of a valuable service from the obligated party, and to enforce it legally*. The Civil Code itself says that „an obligation is a commitment to perform a service and an entitlement to demand the performance of that service” [Section 6:1 § 1].

2. Most of the norms of the law of obligations are *derogatory provisions*. Mandatory rules appear only rarely and exceptionally among the legal norms of this field of private law. According to this, *upon a mutual consent, parties may depart from the common provisions relating to the parties’ rights and obligations, if it is not prohibited by the Civil Code* [Section 6:1 § 3]. Therefore, *without contrary provision of the parties, derogatory provisions as mandatory rules also become the content of the legal relationship of the parties*. If an agreement is contrary to a mandatory rule, it usually becomes *void*. *Functions of derogatory provisions are the settlement of interests, the optimisation of costs, the reasonableness*, and, in some cases, the *equity*.

3. The *law of obligations* govern the following issues:
   - the definitive or provisional transfer of advantages arising from *in rem* rights (for instance purchase, lease);
   - contracts for services to meet needs (e.g. contracts for services, engagement contracts, maintenance agreements etc.);
   - unlawful property changes arising from the infringement of *in rem* or *in personam* rights (like the breaches of contract, or the damage);
   - offers manifold ways of settlement of property changes having no legal basis (for example invalidity, and unjustified enrichment).

As the *static law of rights in rem* govern the enjoyment and exploitation of own assets, the *dynamic law of obligations* rules the legal situations of acquiring definite or provisional enjoyment of assets of another.

2. Origins and Development of Obligations and Contracts

1. The *national distinctions*, which established our *modern private law thinking* enrooted in the course of *survival of Roman Law in the Middle Ages*, were born in *Ancient Roman Law*. Such distinctions were e.g. the *classification of actions into in rem and in personam species* as well as *dividing obligations into civilian, praetorian and natural ones*. Numerous ancient terms and legal categories has survived *more or less intact*, such as the *definition of obligation* by the *Institutions of Justinian* (“iuris vinculum”, see in Inst. 3, 13 pr.), which corresponds with our contemporaneous notion of obligation in the Civil Code (see Section 6:1 § 1): „obligation is a ligament by law, through which we are forced to perform a service by necessity”. The classification of the sources of obligations (by the 2nd century AD jurist Gaius and later on by Justinian in the 6th century) can also be maintained (cf. Section 6:2 of the new Civil Code), which are namely: *contracts, delicts, quasi contracts, and quasi delicts*.

   Thanks to the achievements of the great 12th and 13th century Italian jurists, i.e. the *Glossators*, and their posteriors, i.e. the 14th century Conciliators (commentators), jurisprudence reached the point of being able to divide the categories of *rights in personam* and *rights in rem* in the course of the 15th century.
The **Legal Humanists** of 16th and 17th centuries (esp. Vinnius and Hahn) elaborated the notion of *relative* and absolute private law relationships.

This process was closed by the 19th century **German Pandectists** who formed the main categories of civil procedural law and substantial private law, and systematised substantial private law into a new institutional system of five parts such as 1) the General Part and the Law of Persons, 2) Law of Rights In Rem, 3) Law of Obligations, 4) Family Law, and 5) Law of Succession.

The early 19th century Codes of Civil Law, such as the **French Code Civil** and the **Austrian ABGB**, were based on the former Roman institutional system, but the civil codes of the 20th and the 21st centuries, such as the German BGB, the **Swiss ZGB**, the Dutch NBW or the new Hungarian Civil Code, follow for the most parts this new institutional system.

In the legal systems of Anglo-Saxon world, there is no autonomous system of Law of Obligations. Law of Contracts and Law of Torts correspond to the Continental notion of Law of Obligations.

2. Contracts are not only the most typical but also the most significant sources of obligations. There was a very long journey from the early Roman law ideas to the principle of *pacta sunt servanda*, according to which “agreements must be kept” just because of the parties’ consent and regardless of any other questions. The major stages of this century-consuming procedure were the followings:

- The 2nd century Roman jurist, Gaius said in a principled way that a bare agreement (*nudum pactum*) cannot produce a ligament of law i.e. obligation (Gai. Inst. 3, 89). Law was then ruled by the forms and formalities (misspelling a single word from the prescribed text of contracting resulted in the legal collapse of the transaction).

- It was the formation of the stipulation being independent of certain prescribed words, which made the first step towards making these burdens of forms relaxed.

- The next pace was the evolution of the so-called “real” contracts, i.e. a contract, which comes into being by the voluntary prevenient performance of a party of the contract.

- It was followed then by the grade when the formless consent of both parties could create the contract i.e. a so-called consensual contract, which was, at the same time, convenient with a certain type of contracts (burden of types). Today every contract named in the Civil Code are consensual.

- Another station was in the 4th century AD when burden of forms and type were relaxed by the fact that bare agreements (*nuda pacta*) became also enforceable through legal actions. These enforceable bare agreements were called the *pacta vestita* (agreements clothed with action).

- A millennium was necessitated then for developing the general principle of *pacta sunt servanda*, according to which: “agreements are to be kept” (see Grotius then Wolff). The 16th century Law of Nature, in the base of Christian Canonic Laws, emphasised the “bonds of the given word”, which was the legal fundament of contracts binding solely through the expressed promises of parties. The French Code civil declared that “les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites” (Art. 1134), which means that “contracts are laws between its parties”.

- The former goal, which was to keep the words of this just evolved principle *by any means*, however, necessitated some corrections later on: this stop-go approach lasts until these days as follows:
  - Newer and newer socio-economic and political crises emerging continuously from the 17th century had pointed out that parties usually have the risk in their long-term contractual relationships that making or performing the contract under the same terms may harm their relevant lawful interests in consequence of an unforeseen circumstance that has occurred after the conclusion of the contract; if so, this party is entitled either to refuse the conclusion or the performance of the contract, or to request to have the contract amended by court, or to recover the already fulfilled performance. Behind this rule, there is the principle of *clausula rebus sic stantibus* (by jhering), which could only be formed within the legal relationships of parties of equal market power, and which is as such the first correction and limitation of *pacta sunt servanda*.
  - The next significant turning point in the monopoly capitalism was a process leading to the loss of harmony in the relationship between the parties of equal strength. Even larger companies of increasing power appeared in the market and applied standard contract terms drafted unilaterally in advance: the weaker party called consumer who had a poor choice: either to accept the terms as whole, or to refuse
contracting.

- This new phenomenon also needed a correction: its result was consumer protection law.
- After all these, the following issues has emerged in the 20th century Continental Private Laws:
  - thanks to the process of public law elements' intrusion into private law (Wieacker, Josserand) novel public law constraints has appeared towards freedoms declared also by private law; the ending point of this proceeding was the idea of social market economy, which takes its form by declaring that “property entails social responsibility” (Fundamental Law of Hungary, Art. XIII);
  - another issue was the disintegration of the relative structure of obligations: the composition of obligation has been rived and opened for establishing new obligations for persons not taking part in the original private law relationship as parties; such is the institution of product liability of the manufacturer and distributor of defective products;
  - the last important phenomenon was the growing casuistics of non-contractual liabilities for damages; its one ground was the industrial development (see e.g. the liability for hazardous operations or for nuclear damages), and, the other ground was the process of counteraction towards public law elements' intrusion into private law (such as e.g. the liability for the actions of public authorities).

3. The Sources of Obligations

The Sixth Book of the Civil Code is composed of two major parts: the one is the First Part containing the common provisions relating to obligations (Ss. 6:1–57), the other consists of the other five Parts incorporating the general and special rules of every facts establishing obligations (Ss. 6:58–592).

The Civil Code gives a trifold answer to the question of which facts establish obligation: a) by the structure of the Sixth Book, b) by an exemplificative enumeration of facts among the provisions of the First Part (cf. Section 6:2 § 1), and by the last part of the Sixth Part about “other” facts establishing obligation. A common point of these various issues is that the facts establishing obligation cannot be listed exhaustively, but only major types of such facts containing many sub-types can be named.

According to all these, the named group of facts establishing obligation are as follows: contracts, torts; other infringements of personality rights, rights in rem and other rights; unilateral acts in cases provided for by law; three of them was named, such as offering rewards, public commitments, and securities; unjustified enrichment; negotiorum gestio; implicit conduct; and public law sources of obligations such as the virtue of statutory provision, court ruling or administrative decision, if so ordered by these, and if obligor, obligee, and service are accurately specified.

The last part (Part Six) of the Sixth Book of the Civil Code upon facts “other” than contracts, torts and other infringements of rights, regulates the following facts establishing obligation: the unjustified enrichment, the negotiorum gestio, the implicit conduct, the offering rewards, and the public commitments.

4. The New Hungarian Law of Obligations

1. Hungarian Law of Obligations has been comprehensively, substantially, and deeply reformed with the 15 March 2014 entry into force of the Act V of 2013 upon the Civil Code. These reforms and changings can be summarised as follows:
   - incorporating institutions of other laws into the Code (e.g. factoring, financial leasing);
   - codifying legal standpoints appearing in published court decisions and other court issues of principle (among the rules of invalidity of contracts, breaches of contracts, or matrimonial property law);
   - forming new institutions (such e.g. as debt-undertaking or product guarantee);
   - reviving the older practices of principle of the High Courts before the previous Civil Code of 1959, more exactly, before 1948 (e.g. applying the rules of unjust enrichment in case of a contract’s invalidity);
   - codifying institutions living solely in transactional or market practices (e.g. fiduciary asset management, transfer of contract);
   - reforming and re-structuring old institutions (e.g. assignment, compensation);
   - using optional norms for allowing conducts, the legal grounds of which were textually abolished (e.g. first-loss
guarantee based on the parties’ agreement); this does not mean, therefore, that such institutions would also be terminated since optional law grants the possibility to establish such legal relationships by the parties’ not prohibited agreements;

— following the methods and outcomes of Jurisprudence,
— using the results of comparative law.

2. These reforms had their well-established legal grounds based on social, economic, practical and theoretical circumstances and considerations, which can be classified as follows:

— the general reasons of the comprehensive private law reform regarding also the law of obligations:
  • expanding private autonomy in the base of social market economy;
  • codifying the living institutions of law, and incorporating the institutions of specific laws and judicial as well as transactional practices;
  • making laws for a better compliance with EU law (e.g. consumer protection).

— the specific reasons of reforming the law of obligations:
  • re-newing private law traditions and dogmatics in a wider measure;
  • reaching a more conscious use of optional laws within transactional practice;
  • building-in the outcomes of international law and EU law;
  • elaborating common provisions regarding every kinds of obligations;
  • fulfilling the monistic system of private law by the absorption of commercial and business law;

— the more specific reasons for reforming the law of contracts, see among many others the followings:
  • expressing that parties are not liable solely for the failure of contracting, since the risks of contract negotiations are borne by the parties;
  • forming an autonomous part of standard contract terms;
  • making a general framework for contracting in competitive selection processes and for contracts concluded by electronic means;
  • classifying the reasons for invalidity, and amending some of their specific provisions;
  • incorporating the black and grey list of unfair contracts terms;
  • dividing contractual and delictual liability for damages, and deeply reforming the provisions of the contractual liability;
  • significantly reforming the provisions of warranty;
  • expanding the application scope of the regulation of unjustified enrichment.
II

MOHAI, MÁTÉ

SETTLEMENT OF THE OBLIGATION

1. General Regulations

1. The general rule of performance. At the beginning of the general regulations of the settlement of the obligation the 6:34 § of the Cc. declares as of conceptual importance, that a service must be performed according to the contents of the obligation. Under this generic clause, the performance of the service must suit the contents of the obligation. If it does not, in most cases the rules of breach of contract should be applied accordingly.

2. The time of the performance. The time of the performance of the service can be confirmed by a delivery date or a delivery period. In case of a delivery date, the service can only be performed on that given day. If a period for the delivery was set, the obligor can perform the service any time during that period, except if the circumstances suggest that the obligee is entitled to pick the delivery date within the delivery period. If the delivery date can be confirmed based on the purpose of the service, the obligor shall perform the service on that date. If the delivery date cannot be confirmed under these rules, the obligor shall perform the service after the due preparation time.

3. Performance before the delivery date. The obligee must accept the performance of the service offered by the obligor before the delivery date, if the early settlement doesn’t harm the obligee’s essential lawful interests, and if the obligor covers the extra costs occurring from the early settlement. If the obligee accepts the early settlement, it doesn’t affect the time of performance of his services.

4. The place of performance. Unless otherwise provided for in the Cc., the place of performance is, where the obligor’s secondary establishment was at the time when the obligation was established, or, in case the obligor doesn’t have a secondary establishment, the obligor’s registered office or his home address, or, in case the obligor doesn’t have a home address, his habitual residence. If the obligor has several secondary establishments, the place of performance is the one that has the closest connection to the obligation. If the obligor notifies the obligee that the place of performance has changed after the establishment of obligation, the place of performance is the new secondary establishment or registered office, or the new home address or habitual residence. The obligor shall advance and bear the extra expenses that arise from changing the place of performance.

5. Acknowledgement of the performance. The obligee must provide a written acknowledgement of the obligor’s performance or to return the promissory note at the obligor’s request. If a person presents the written acknowledgement of performance from the obligee, he shall be recognized as a person authorized to accept performance, unless the circumstances suggest that he has no entitlement to accept performance from the obligor.

6. The bearing of the expenses of performance. The obligor shall borne the expenses arising in connection with the performance of the service.

7. Distribution of specific service. If the obligor shall deliver things of a specific type and quantity to the same obligee, but to different places, and the obligor is unable to deliver the entire quantity, he shall distribute the available quantity according to the instructions of the obligee. If the obligee refuses to command, although he was requested to do so by the obligor, the obligor must reduce the quantities proportionately.

8. Settlement in case of several debts. If the obligor shall perform several homogeneous services to the obligee and the performance offered by the obligor does not cover all of the debts, the obligor is entitled to choose the debt at the time of the performance, which he wants to apply such performance to [Section 6:41 § 1]. If the obligor did not designate the debt, which he wants to apply such performance to, and his intention isn’t recognizable, the obligee can decide which debts—that are overdue and uncontested—the performance shall be applied to. The obligee must provide information to the obligor of his choice
in due time [Section 6:41 § 2]. If neither party has chosen a debt, or the obligee did not provide information to the obligor of his choice, the performance shall be applied to the debt that expired earlier, or if the debts are of the same maturity, to the one that has less security attached, in case of equally secured debts, to the one that is more burdensome for the obligor [Section 6:41 § 3]. If it cannot be settled under these rules, the performance shall be applied to all debts proportionately [Section 6:41 § 4].

2. Settlement of Monetary Debts

1. Payment. A monetary debt can be settled by the obligor by assigning the ownership of money to the creditor or by cash in or credit transfer to the creditor’s payment account. A monetary debt is settled at the time of receiving the money if paid in cash, or at the time when the creditor’s bank entered, or should have entered the money to the creditor’s payment account. These provisions also shall be applied to the performance of any other obligation regarding the transferring of money.

2. Early settlement of monetary debt. The obligee must accept the early payment.

3. The place of the settlement of a monetary debt. The place of the settlement of monetary debts is the obligee’s secondary establishment at the time when the obligation was established, or, failing this the place of settlement is the creditor’s registered office his home address or, failing this, his habitual residence in the case of natural persons. If the debtor doesn’t settle the monetary debt by cash payment, then the place of settlement is the secondary establishment of the creditor’s bank at the time when the obligation was created, or, failing this, the bank’s registered address. If the creditor had more than one payment account at the time when the obligation was established, the debtor has the right to choose the place of settlement. If the obligee has more secondary establishments, the place of settlement is the one that has the closest relationship to the obligation. If the place of settlement has changed after the establishment of the cash debt, and the debtor is notified by the creditor of the change, the place of settlement will be the new secondary establishment or registered office of the creditor, or the new home address or habitual residence if the creditor is natural person. The creditor shall advance and to bear the extra expenses arising from the change of the place of settlement.

4. Terms of payment of a monetary debt. Monetary debts shall be paid in the currency at the place and time of it’s settlement [Section 6:45 § 1]. If the monetary debt was determined in another currency, it must be converted at the rate at the time of settlement set up by the central bank of the place of settlement—or, failing this, at the money market rate. If a monetary debt is to be settled in another currency, and the debt cannot be settled in that foreign currency at the time of settlement, it shall be settled in the legal tender at the place and time of its settlement [Section 6:45 § 2].

5. Settlement in case of several debts. If the total paid in settlement for a monetary debt is not enough to cover the entire debt, the total shall be used for paying the costs first, then the interest, and, finally, the principal debt, if the creditor did not provide otherwise, and his intentions are not clearly discernible. The mentioned order set out in the Civil Code is a permissible rule, the creditor may provide otherwise, or in the absence of his explicit intention, his recognizable intention is the starting point regarding the order. A debtor who is late in settling the debt is not entitled to deviate from the general rule regarding the order for settling the debt. Of course, the parties can also regulate the order in an agreement between them.

6. Interest. Unless otherwise provided for in the Cc., monetary debts are subject to interest. The rate of the interest is the same as the base rate of the central bank. If the debtor shall pay in another currency, the interest rate is the same as the base rate of the central bank of the foreign currency, or if it isn’t one, the money market rate. Calculating the interest, the interest rate which is in effect on the first day of the calendar half-year affected shall apply to the entire period of the affected calendar half-year.

7. Late interest. In cases of monetary debts, the debtor shall pay interest on late payment from the time of the delay calculated by the central bank base rate in effect on the first day of the calendar half-year, or—if the monetary debt shall be settled in a foreign currency, by the base rate of the central bank of the foreign currency, or failing this, by the money market rate -, even if the debt was otherwise free of interest [Section 6:48 § 1].

If the debtor shall pay interest up to the time of delay to the creditor, the debtor shall pay interest on
the late payment in addition to the interest due, as of the date of delay at a rate of one-third of the central bank base rate in effect on the first day of the calendar half-year, or—if the monetary debt shall be settled in a foreign currency, by one-third of the base rate of the central bank of the foreign currency, or failing this, one-third of the money market rate —, but aggregately not less than the default interest specified in Subsection (1) [Section 6:48 § 2]. Estimating the interest, the central bank base rate which is in effect on the first day of the calendar half-year affected shall apply to the entire period of the affected calendar half-year. [Section 6:48 § 3]. Even if the obligor beats his default, he shall pay the interest [Section 6:48 § 4].

3. Compensation

1. Compensation of pecuniary claims. The Cc. deals with the set-off in the general rules for the settlement of the performance, as a special case of settlement. Since this form of settlement is used in the major part of cases in financial accounts, the Cc. primarily provides rules for the set-off of monetary claims. The credit institution’s right to debit the account kept by the account holder with its claim shall be judged in accordance with the rules of the set-off (BH2007. 56).

The debtor is entitled to settle his debt also by way of compensation of his overdue pecuniary claim against his monetary debt by means of a legal statement made out to the creditor. The set-off is made by a one-sided legal statement addressed to the creditor, there is no need for the consent of the creditor, which means, that the set-off is a form of settlement and not an agreement. Obligations cease to exist up to the value of the compensation.

The set-off is the debtor’s statement to the creditor, that he won’t settle his obligation, but he won’t claim the creditor’s expired debt to the same value. The set-off eliminates the debtor’s debt within the facilities of settlement (BH2015. 281).

2. Limitations on the compensation of pecuniary claims. A lapsed pecuniary claim can also be offset if it had not yet lapsed at the time when the monetary debt became due. Only the same type of monetary debt can be offset against a pecuniary claim provided for by an enforcement order or composition, or if it is executed in a notarial document. Only those monetary debts can be offset against pecuniary claims which are exempt from judicial enforcement, that derive from the same legal basis.

3. The exclusion of compensation. A set-off is not allowed against claims regarding maintenance payments and benefits, with the only exception of overpayments; and against a pecuniary claim for compensation for a damage that was caused purposely. A pecuniary claim that cannot be demanded in court is not entitled to be offset. The following claims cannot be demanded in court:

- claims originating from gambling or betting, except it has been authorized by the relevant authority;
- claims originating from a loan promised or granted explicitly for purposes of gambling or betting;
- claims that cannot be enforced by judicial process, as expressly excluded by the law;
- claims arising from contracts or terms guaranteeing or confirming the claims mentioned above.

4. Court and Notarial Deposit

1. Settlement through court deposit. The debtor can settle his obligation of payment or to deliver securities or other documents through court deposit if:

- the person of the creditor is uncertain, and the debtor is unable to identify the creditor’s identity and it is not his fault;
- the creditor cannot be found at the place of the settlement of the obligation;
- the creditor refuses to accept the properly offered performance by the debtor; or
- the creditors did not permit the debtor to provide settlement into the hands of all of them in case of collectiveness of obligees.

The regulations on deposit contracts shall be applied to the obligations of the depositary. The state does not pay interest on the court deposit, no custodial fees and handling fees are charged. The court’s finance office handles the cash deposit on the custody account.
2. Recovery and limitation. The obligor can withdraw his deposit until the creditor is notified of the deposit by the court. The creditor is able to demand the delivery of the deposit within five years from the date of receipt of the notification from the court. If the creditor’s right to demand the deposit ceases, the debtor can demand the deposit back.

3. Release of the deposit. The court can deliver the deposit to the obligee. If the deposit was made because the identity of the obligee is uncertain, the deposit can be delivered in the base of a binding or final decision verifying the identity of the obligee. In case of collectiveness of obligees, the court can give out the deposit only at the request of all obligees, or in the base of a binding decision verifying the identity of the obligee. The debtor is entitled while making the deposit to lay down that it can only be delivered to the creditor if the performance of the creditor is confirmed.

4. Notarial deposit. If the conditions for settlement through court deposit are satisfied, the debtor also can settle his debt by way of a notarial deposit. The provisions regarding court deposit also shall be applied to notarial deposit.

5. Settlement by a Third Person

The creditor must also accept settlement offered by a third person if the debtor has given consent to the settlement by the third person and the service is not bound to a specific person, and if it does not require any expertise or skill that the third party does not have. The debtor’s consent isn’t required if the third person has an essential lawful interest in the settlement and the debtor failed to settle the debt, or it is evident that the debtor won’t settle the debt in due time. The third person has the right to demand compensation from the debtor, unless the nature of the relation between the debtor and the third person suggests otherwise. If a third person has a claim against the debtor as a result of his settlement of the debt, the assurances of the terminated claim remain in effect, and will be transferred to the new claim. This provision shall be also applied if the debt is settled in the base of a lien or if the debt was settled by a guarantor.
III

FABÓ, TIBOR

THE FORMATION OF CONTRACTS

1. Basic Issues

The issue of formation of contracts raises the following problems: existing, non-existing contracts, nullity of contracts; the role of the intent of the parties; the contents of the contracts; the technical issues how the contract comes into existence.

1. Existing, Non-Existing Contracts, Nullity of Contracts. It is important to differentiate among the valid, void and non-existing contracts. The merit of any contract is the mutual and congruent expression of the parties’ intent concerning all essential issues as well as those deemed relevant by either of the parties. There is no need for any additional so-called real act like performance of one of the parties (principle of consensuality). Provided the parties agreed upon the essential contractual terms the contract came into existence. The existing contracts can be null and void because of reasons determined by the law and this way the otherwise existing contracts will not be available to achieve the goals of the parties. When an agreement in essential issues is missing from the agreement there is no contract at all.

2. The Role of the Intent of Parties: Freedom of Contract v. Statutory Obligation to Contract. Coming into existence of a contract means either the conclusion of the contract by the parties when they express their mutual intent or those cases as well when the court establishes the contract according to the provisions on statutory obligation to contract. Statutory obligation prevails for example in insurance law concerning obligatory liability insurance (entrepreneurs who carry on medical or legal activity or the owners of cars).

Where a party unjustifiably refuses to conclude or maintain a contract by abusing his dominant position, the other party shall have the right to bring action and request the court to establish the contract between them under the principle of statutory obligation to contract.

Where the parties agree to enter into a contract at a later date, and they define the material terms of that contract, their preliminary contract establishes obligation to contract. If one of the parties refuses to conclude the contract without proper, legally accepted reasons, and the other party brings action, the court shall have powers to establish the contract under the terms and conditions of the preliminary contract.

3. The Contents of the Contracts. The parties shall have the right to agree in the content of their contract (principle of freedom of contract). The elements of the content can be essential, accidental or natural issues. Those issues shall be qualified essential which the law or either of the party deems relevant. Any issue deemed relevant by the parties shall be essential if either party expressly indicates that an agreement on such issues is a precondition for the conclusion of the contract. That is to say, the essentiality of these issues is accidental, depending on the parties’ intent.

There are several mandatory, so-called cogent (binding) legal provisions (e.g. the rules defending consumers’ rights) which become the content of the contract even if the parties do not agree upon it or expressly are going to exclude it from the content of their contract.

The parties need not agree on issues which are regulated by statutory provisions. When the parties did not agree upon the non-essential (natural) issues the provisions of the Civil Code will supply their missing intent. Lack of their agreement in these issues shall be interpreted so that they accepted the provisions of the Code as natural part of their contract.

If the contract is concluded, but the parties have not clearly defined the amount of consideration, or if the market price has been stipulated as the price, the average price prevailing on the date of performance in the market regarded as the place of performance shall be paid. Any usage which the parties have agreed on in prior business dealings and by any practice they have established between themselves shall be the content of their contract, too.
2. Concluding Contracts: Offer, Binding Period, Acceptance

Where the parties conclude the contract by way of their free and mutual intent the model of establishing the contract is very simple one. The person (offeror) who is going to establish a contract shall make a *legal statement showing the relevant issues and clearly indicating his intention to enter into a contract (offer)*. Where he does not exclude it he shall be bound by his statement. The **binding period** shall commence when the offer takes effect. The offeror may specify the period for his offer to remain binding. In lack of this the binding period shall terminate:

- when the offer is made between persons present, if the other party fails to accept the offer immediately;
- in the case of distance contracts, upon the expiry of the period of time within which the person who made the offer can normally expect—in light of the nature of the services specified in the offer and the manner in which the offer was delivered—to receive a response;
- if the offer is refused by the other party.

The binding period shall cease if the offeror revokes the offer by means of a legal statement addressed to the other party, and the revocation reaches the other party before the other party sends an acceptance. An offer may not be revoked

- after it has entered into effect,
- if the offer indicates that it is irrevocable or
- if the offer states a fixed time period for its acceptance.

Where the other party (addressee, offeree) indicates assent to the offer his statement shall be deemed acceptance as a result of which the contract comes into existence. Where his statement differs from the offer in essential issues it shall be deemed new offer.

3. Methods of Concluding Contracts

The needs of the economy lead to certain techniques in the field of concluding the contracts. Sometimes the selection of the best contracting party in other cases the need for speed up the contractual process motivated the “actors” of the economy to invent the best legal solution for serving their interests. The Civil Code itself regulates free special ways of concluding the contract we discuss hereunder.

1. **Invitation to Tender in Competitive Selection Process.** Where a party publishes a *contract notice inviting several persons to submit a proposal*, where the *contract is awarded following a selection process conducted under the criteria set out in the notice to the offeror who made the best offer, the party having published the notice shall be subject to contracting obligation.*

2. **Conclusion of Contracts with Standard Terms and Conditions.** Standard terms and conditions are available to speed up and simplify the process of concluding the contract when the subject of those can be specified according to species and quantity (standardized products of industry or agriculture). There is no need to stipulate the terms and conditions in course of every transaction since the *terms are drafted in advance and the species and the quantity are to be agreed.* Not only favours but disadvantages are also significant when parties use this technique since there are at least three important issues to be cleared.

- What shall be deemed standard terms and conditions?
- When these terms and conditions shall be deemed content of the contract of the parties?
- What shall be the consequence when there are unfair terms and conditions in the standardized terms of the contract? (This is the question of nullity of the term which shall be discussed in frame of nullity of contract.)

*a) The Notional Elements of Standard Terms and Contracts.* Standard contract terms mean contract terms

- which have been unilaterally drafted in advance
- by one of the parties for several transactions involving different parties, and
- which have not been individually negotiated by the parties

Where it is not clear whether the terms were individually negotiated it is the party applying the standard contracts terms who shall prove that those were really negotiated individually.
b) Conditions of Becoming Content of the Contract. As general rule, contract terms shall become part of a contract only if they have previously been made available to the other party for perusal before the conclusion of the contract, and if the other party has accepted those terms. According to a special rule it is not enough to provide the opportunity of knowing the terms, but the other party shall be explicitly informed of any standard contract terms that differs substantially

– from the relevant legislation or
– from usual contractual practice, except if they are in line with any practice the parties have established between themselves.

The other party shall be explicitly informed of any standard contract terms that differ substantially from any stipulations previously applied by the same parties. The abovementioned terms shall form part of the contract only if the other party has expressly accepted them after being informed about them.

3. Contracts Concluded by Electronic Means. Nowadays more and more transactions are realized by using electronic means. The Civil Code provides rules just for those contracts which belong to the group of online trading. In connection with contracts concluded by this way, the party providing the electronic means for concluding the contract shall give all the information which the Code prescribes.
The contract is mutual and unanimous disclaimer of the parties, which disclaimer is made with the parties’ intention to achieve specific objectives and to precipitate specific legal effects. However, sometimes the parties’ mutual will declaration aimed to produce legal effects are not suitable for effects to trigger, so for the aim of the contract to attain. Therefore, null is the contract, if inadequate for statutory reasons (grounds for nullity) to trigger the targeted effects of the parties. There is two types of nullity in private law: absolute and relative.

The absolute nullity is the complete ipso iure form of nullity. An absolute null contract is invalid as from their conclusion. There is no need for a separate procedure to establish the nullity and it may be referenced in any procedure. The court ex officio required to detect whether a contract is null. The absolute nullity can be referenced -unless the Civil Code rules otherwise- by those who have a legal interest therein or the law expressly authorizes. The legal interests of parties are to be considered above all, so the verification of the presence of a legal interest is required in case of third parties.

The Civil Code does not specify a time limit for the ex officio detection or reference of the absolute nullity. The application of the legal consequences of the absolute nullity however takes place only within the limits of the statute of limitation and adverse possession.

The relatively null contract is created valid and becomes invalid only if it is effectively attacked by persons entitled to. A relatively null contract is therefore conditionally null. In the case of effective attack, similarly as the absolute null contract, it becomes null from the time of entering the contract (ex tunc scope).

The law defines the range of the persons entitled to attack the contract. According to this, entitled is the injured party, as well as all those who have a legal interest to attack. The entitlement to attack is a pecuniary subjective right, therefore subject of succession.

There is for the attack by the entitled a one-year limitation period available, which can be exercised -by the entitled one’s choice- by a disclaimer for the other party or by litigation directly before the court.

2. Grounds for Invalidity

1. Classification of the grounds for nullity. Classification of the grounds for nullity. The legal reasons resulting in the invalidity (grounds for nullity) of a contract the Civil Code divides into three groups. The first group includes those in which the contractual consent of the parties is defected, the second the formal errors of the contractual declaration, the third the defects of the legal effect sought by the contract, leading to the invalidity of the contract. Reasons leading to invalidity can however be grouped according the reasons that, result the contract in ex lege invalidity (null), and reasons that, after effectively attacked by persons entitled to lead to invalidity (relative nullity).

2. Defects in consent. The general traits of defects in consent. The parties’ defect in consent may be several and only under special circumstances do they result in nullity legal outcome. Broadly, the contracting party’s will declaration error is in all cases, when the party does not reach the purpose by concluding the contract which was originally intended, or it was not in his intention to reach the purpose by concluding the contract.

3. Relative null contracts. Outside the contract law rules of the Civil Code there are consent defected contracts in the provisions of the Second Book as well:
   - legal statements of minors of limited legal capacity [Section 2:12 (1) on the Civil Code] and
   - legal statements of incompetent minors [Section 2:14 (1) on the Civil Code],
– incompetency of persons of legal age [Section 2:9 (1) on the Civil Code],
– legal acts of persons of partially limited legal capacity [Section 2:20 (1) on the Civil Code] or
– legal acts of incompetent adults under legal guardianship [Section 2:22 (1) on the Civil Code].

The Civil Code regards these as relative null contracts, i.e. the invalidity of the contract shall be referred to due to the interest of incompetent person.

4. Mistake. According to the legal definition the condition of applicability of the invalidity caused by the mistake, is that the mistake was:
– relating to significant material circumstance,
– existing at the time when contract is concluded,
– caused or could have been recognized by the other party [Section 6:90 (1) on the Civil Code].

Mistake can be pleaded within the framework of relative nullity.

5. Misrepresentation and threat. Subtracting the legal consequences of the nullity of misrepresentation and threat, -compared to the mistake- the intentionality is an additional factual element. The party's straight, or at least contingent intention must extend to cause and keep misapprehension, or in case of unlawful threat, intentionally envisage negative consequences, with respect to which the other party's declaration became different from the originally intended.

6. Disguised stipulations, sham contracts. Disguised stipulations and concealed motives shall be immaterial with respect to the validity of the contract. In case of a sham contract, the contract is concluded with respect to both parties consciously defected consent, in the way that, the parties’ declaration coincident however, the actual transaction will or is not directed at contracting, or the expressed will have different content. A sham contract shall be null and void, and if such contract is intended to disguise another contract, the rights and obligations of the parties are to be adjudged in the base of the “disguised contract”.

7. Errors in contract statements (formal errors). Formal invalidity is avoidable by performance or amendment. If a contract is annulled for any breach of formal requirements, it shall become valid by acceptance of performance, up to the extent performed. Any amendment to and termination or cancellation of a contract made in the absence of statutory formalities shall be deemed valid, if the actual state conforming thereto has been established with the parties’ mutual consent. [Section 6:94 (1)-(2) on the Civil Code]

8. Formal invalidity not avoidable by performance or amendment. If the contract is to be executed by law in an authentic instrument or private deed representing conclusive evidence, or if the contract pertains to the transfer of a real estate property, any amendment to and termination or cancellation of a contract made in the absence of statutory formalities shall be null and void, even if the actual state conforming thereto has been established with the parties’ mutual consent.

9. The defect of in the intended legal effect. The common characteristics of the nullity reasons caused by defect in the intended legal effects. Under the name of defect in the intended legal effects, the Civil Code names cases in which the application of the legal effects of nullity avoids the parties from fulfilling the purpose of the contract concluded. The common meaning of the rules presented is that the legislator with the tool of nullity restricts the parties’ private autonomy, in order to prevent and eliminate adverse social and economic effect of the desired goal.

10. Illegal contracts. Unlawful is a contract if it’s important, essential content incompatible with the cogent, mandatory part of Civil Code. Moreover, contracts concluded by circumventing the law shall be null and void. In case of this transaction, in the matter of the service itself is not contrary to the law; however, the transaction objective pursued is to circumvent a mandatory legal provision.

11. Immoral contracts. Since the content of the norm is not rooted in the law, so the legislator has the task of evaluating a case of obvious contravention of the contracts, thus filling the gap in the law with content. Judicial practice does not only examine contractual service in this regard, but also reveals all the relevant circumstances of the case assessing the intention of the parties to the contract, the purpose to be achieved by the contract and the objective to be achieved in concluding the contract in the determination of the goodwill.

12. Usurious contracts. The conditions of determination of the usurious contracts:
between the service and the remuneration there is strikingly disproportionate difference (objective),

one party to be in a disadvantaged position which makes him conclude the contract with such terms (subjective),

the injury-causing party conducts intentionally to utilize the disadvantage of the other party to benefit disproportionately (subjective).

13. Gross disparity in value. The legal provision of the gross disparity in value allows the impugnment of the nullity based on the breach of contractual equivalence (in Greek synallagma). The determination of gross disparity:

- difference between the value of a service is grossly unfair,
- at least one party is not controlled by the intention of gratuitous assignment,
- the circumstances shall exist at the time of concluding the contract.

14. Nullity of fiduciary collateral arrangements. Any clause in which a consumer undertakes the commitment for the transfer of ownership, other right or claim for the purpose of security of a pecuniary claim, or for the right to purchase, shall be null and void [Section 6:99 on the Civil Code].

15. Unfair clause in consumer contracts and consumer disclaimers. Any clause of a contract that involves a consumer and a business party that derogates from the provisions of this Act on consumer rights to the detriment of the consumer shall be null and void [Section 6:100 on the Civil Code]. In a contract that involves a consumer and a business party, any disclaimer by a consumer of a statutory right shall be considered null and void [Section 6:101 on the Civil Code].

16. Unfair standard contract terms. The Civil Code considers all instances as unfair contract terms, in which for the detriment of the party with the weaker empowerment the other party attempts to benefit or take a more advantageous position by infringing the good faith and general integrity. Article 6:102-106 on the Civil Code are based on the following regulatory logic:

- the legislator determines concerning the general contractual terms, if when a contract is considered unfair and rules about validation rules of the terms based on unfairness [Section 6:102 on the Civil Code].
- separately regulates the application of unfair terms in consumer contracts, where, in the case of a consumer contract, the legal effect of invalidity is linked not only to the unfair terms of the general contract terms but also to the contractual terms which is not individually discussed but unfair [Section 6:102 on the Civil Code].
- the Civil Code relating the consumer contracts provides a catalogue of the unfair contractual terms: the obviously unfair and therefore prohibited terms and terms, unless the contrary is proved, to be considered unfair by reciting those [Section 6:104 on the Civil Code];
- the Civil Code separately regulates the rules of public-interest proceedings in connection with consumer contracts [Section 6:105 on the Civil Code] and public-interest proceedings in connection with contracts between business parties and with contracts between a contracting authority and a party other than a contracting authority [Section 6:106 on the Civil Code].

17. Impossible performance. Incomprehensible and inconsistent terms. According to the Civil Code contracts aimed at impossible services shall be null and void, if the impossibility is unavoidable objectively. A service shall not be deemed impossible solely on the grounds that the obligor does not (yet) have the object of the service in his possession at the time the contract is concluded. Incompatible or contradictory contractual clauses impose on the contract and impede the will of the parties. Therefore, the law of such contractual clauses regard void.

3. The Legal Consequences of Invalidity

The prime and fundamental legal consequence of the nullity is the prevention of the legal effects aimed by the contract. The null contract does not bind the parties, none of the parties can demand provisions defined as the subject of the contract. A null contract cannot be enforced in front of the court. The grounds of nullity must be perceived by the court ex officio, thus rejecting the lawsuit based on the null contract. The legal consequences of the nullity are exercisable following a claim for judicial
enforcement. Such legal consequence may be the validation of the contract by eliminating the grounds of nullity or by the restoration of original conditions (in integrum restitutio) furthermore, in certain cases, the unjust enrichment rules apply. The legal consequences related to the nullity next to the above is (due to the nullity) the obligation to reimburse benefits, expenses and interests occurring by the usage without legal entitlement, money and the damages caused. In case of the grounds of nullity is applicable not for the complete contract but only for distinctive parts, and this clause of the contract is not an essential or indispensable part of the content of agreement than the legal consequences of the nullity are only applicable to this section of the contract. If, however, it could be assumed that the parties would have not concluded the contract without the null clauses than the nullity is extended to the contract as whole and the contract is considered null.
INEFFECTIVENESS OF CONTRACTS

1. Species and Legal Consequences of Ineffectiveness

Ineffectiveness of contracts can be handled in a wider as well as in a narrower sense. Its broader notion incorporates the narrower cases plus those ones, in which the cause of ineffectiveness is the invalidity of the contract. Ineffectiveness has two species: the absolute and the relative ineffectiveness.

1.1. Absolute Ineffectiveness

Since an absolute ineffective contract has yet or already no effect towards the parties or anyone else, a relatively ineffective contract has no effect or has only certain decreased effects towards a concrete person or a certain group of persons identified by law. An invalid contract is at the same time absolute ineffective. However, the character of absolute ineffectiveness of an invalid contract and that of a valid one is not the same at all, viz.:

– although, by the operation of law, an invalid contract cannot have effects targeted by the parties, it does have certain non-aimed effects also by the operation of law;

– on the contrary, the ineffectiveness of a valid contract may be resulted from many causes such as:
  
  • the parties’ agreement, this is called temporal ineffectiveness (cf. conditions and terms; see Sections 6:116sq),
  
  • the operation of law, in the case e.g. of: the lack of third parties’ consent required by law [Section 6:118], and the lack of an official approval required by law [Section 6:118].

1.2. Relative Ineffectiveness

Relative ineffectiveness is called otherwise as personal ineffectiveness. In its cases, the contract or other transaction has no effect, although it is valid, because it infringes the rights or harms the legal interests either of third parties (extranei) in general or that of a certain third person. These cases are, therefore, not the case of such infringements, which may lead to invalidity of the contract. The legal consequence of such a situation is that this contract or other transaction is effective towards everyone except the infringed third party or parties, towards whom it may have no effect.

The cases of relative ineffectiveness can be classified into three groups of matters of facts:

– It is common in the first group that these contracts have no effect towards that very person of good faith who did not have and ought not to have any knowledge about certain facts being relevant with respect to the contract in question; here are some examples:
  
  • any restriction of the power of representation vested upon the legal person’s authorized representative shown in the registry of legal persons, cannot have any effects as against third parties, if the third party did not know, or should not have known about the restriction (3:31);
  
  • the restriction or withdrawal of the power of attorney in terms of a third person shall be effective only if he was aware or should have been aware thereof [Section 6:15 § 4];
  
  • restrictions on the scope of authority of a person who shall be construed as representative since this one is presumed under reasonable grounds to be authorized to make pertinent legal statements in commercial establishments shall be inoperative towards third persons, unless the these have been aware of such restrictions [Section 6:18 § 1].

– The failure of mandatory registration of the contract may lead to the situation that it or an element of it becomes ineffective towards third parties, for instance:
  
  • a marriage or a partnership contract shall be considered ineffective towards third parties if
the contract is not recorded in the national register of such contracts (Ss. 4:65 § 2; 6:515 § 3);
• if the contract between landowner and building-owner regulating their rights and obligations relating to the construction of the building and the use of the land was recorded in the real estate register, it shall be considered ineffective towards third parties [Section 5:19 § 1].
  – In some cases, the relative ineffectiveness of a contract towards third persons is a private law sanction, which becomes effective, if the content or the goal of the transaction cannot be supported by law; in these cases, the knowledge of third parties about certain relevant facts has no significance; such a case is:
    • a disposition contrary to the restraint on alienation or encumbrance shall be ineffective with respect to the person whose right it is intended to protect [Section 5:32 § 1];
    • if the acquiring party acted in bad faith or had a gratuitous advantage originating from a contract, by which the basis for satisfying a third person’s claim has been deprived entirely or in part, this contract shall have no effect towards this very third person [Section 6:120 § 1];
    • if the owner enters into a contract by breaching his obligations stemming from a right of pre-emption, such contract shall be ineffective towards the holder of the right of pre-emption [Section 6:223 § 1].

1.3. Legal Consequences of Ineffectiveness

1. A contract is ineffective, if (a) it has not yet become effective or (b) it has already lost its effect or (c) third parties’s consent or an authority’s approval lack or these were was refused. The common legal consequence of these cases is that the performance of such contracts may not be demanded.

2. Sometimes, on the ground of an ineffective contract, one party or both parties of it has already performed the service. In this case, the legal consequences of invalid contracts shall be proper applied:
   – beyond the consequence that the performance of an ineffective contract may not be demanded, there can be further consequences, which shall be invoked by the court at the party’s request (6:108 § 1);
   – courts may apply the consequences of ineffectiveness in a way that differs from the party’s request, but it may not prescribe a solution that is protested by all parties [Section 6:108 § 3];
   – in connection with performing in the base of an ineffective contract, each party has the right to reclaim the service that has been provided from the other party in kind, if that party also returns the service that has been received by him/her in kind (cf. Section 6:112 §§ 1–2);
   – a contract becomes effective retroactively to the date of conclusion, if parties subsequently eliminate the grounds for ineffectiveness [Section 6:111 § 1];
   – the questions of collateral demands:
     • the parties shall provide compensation for the proceeds and interests not restituted by in integrum restitution according to the rules of wrongful possession [Section 6:115 § 1 and see also Sections 5:9–12];
     • the rules of unjust enrichment shall be applied for performances on the ground of an ineffective contract in two cases: on the one hand, in the case of hindrances, it shall be applied instead of in integrum restitution, on the other hand, in the case of unrestituted collaterals together with in integrum restitution in a complementary way [Section 6:115 § 1].

2. Conditions, Terms; Pending Conditions

1. The Civil Code says [Section 6:116] that if parties have made the effective date of a contract contingent upon an unpredictable future event, which is called “condition”, the contract shall become effective when such condition is met (suspensive condition); and, if parties have made the termination of a contract contingent upon an unpredictable future event, the contract shall expire when such condition is met (resolutive condition).

These provisions shall also apply, if parties have attached the entering or the termination of effectiveness of a contract not to an unpredictable future event but to a certain date. This is called “term”.

2. Some unilateral acts and contracts do not tolerate conditions and terms at all (or they do so only partially):
   – marriage declaration cannot be made subject to a condition or time limit [Section 4:5 § 1];
   – in contracts which involve a consumer and a business party, the contract term shall be considered
unfair, until proven otherwise (and therefore void), if its object or effect is to allow a business party to be bound by commitments subject to compliance with a specific condition, the fulfilment of which depends exclusively on the business party (Section 6:104 § 2 f);

– any condition that is manifestly in contradiction to good morals, unintelligible, impossible, or contradictory shall be invalid; and, a testamentary bequest rendered contingent on an unlawful suspensive condition shall be invalid, and such bequest rendered contingent on an unlawful resolutive condition shall be disregarded (Section 7:38 § 1–2);

– any disclaimer of inheritance rendered contingent on a condition shall be invalid (7:89 § 4).

3. So long as a condition is pending (see Section 6:117), neither party shall be entitled to do anything that would infringe upon or violate the other party’s rights upon the satisfaction or failure of the condition. Parties may not fail to act reasonably for gaining that the parties can satisfy their obligations when the condition occurs.

Persons who have actionably caused the satisfaction or failure of a condition shall not be entitled to establish any right thereupon. This is a special case of nemo suam turpitudinem allegans auditor, by which a person may not rely, in support of his claim, on an unlawful act he/she has committed. Anyhow, this does not mean that the furtherance of the condition’s occurrence would be per se an unlawful conduct; sometimes this is just indispensable.

3. Contracts Subject to Third Parties’ Consent or an Authority’s Approval

1. If the consent of third parties or an official approval is required by law for the effectiveness of a contract, the contract shall become effective upon that consent or approval with a retro-active effect to the date of the contract’s conclusion (Section 6:118 § 1). Until the statement of consent or approval is granted, and within the deadline for making such statements, the rights and obligations of parties shall be legally considered with respect to the regulation of pending conditions (Section 6:118 § 2). This means that none of the parties shall be entitled to do anything that would infringe or violate the other party’s rights upon the satisfaction or failure of the condition (Section 6:117 § 1). The contract shall not become effective, if the third party fails to give the consent or the authority fails to grant the approval, or if they fail to make such statement within the deadline conveyed by one party to another (Section 6:118 § 3).

2. There are many laws, which limit freedom of contract by binding the effectiveness of the contract to the consent of third parties or to an authority’s approval. These laws belong mainly to the field of public law and administrative law but some of them are the part of private law in the Civil Code. The lack of consent or approval not always affects the effectiveness of contracts, but such a shortage may lead also to diverse legal consequences such as e.g.:

– absolute ineffectiveness (e.g. when a person makes a legal statement in the name of another without authorization, it shall invoke any legal effect upon the represented person’s consent; 6:14 § 1);

– relative ineffectiveness (e.g. the entitled party’s consent is required for any disposition contrary to the restraint on alienation, in the lack of such consent, the disposition shall have no effect with respect to the person whose right it is intended to protect; cf. Section 5:32 § 1);

– invalidity (e.g. the legal statements of a minor with limited capacity can only be valid with the consent of his/her legal representative; cf. Section 2:12 § 1);

– a special (sui generis) liability for damages (e.g. the lessee is entitled to sub-lease the leased thing to third parties only subject to the lessor’s permission, and without it, the lessee shall be liable for damages that otherwise would not have occurred; cf. Section 6:334 §§ 1 and 3).

4. Fraudulent Contracts and “Paulian Action”

1. The new Hungarian Civil Code preserves the ancient Roman Paulian Action in a modern sense, since it declares that “A contract, by which the basis for satisfying a third person’s demand has been deprived entirely or in part, shall have no effect in respect of this third person, if the acquiring party acted in bad faith or had a gratuitous advantage originating from this very contract.” (cf. Section 6:120 § 1). Bad faith and gratuitousness shall be presumed if a person concludes such a fraudulent contract with his/her relative or with a legal person with whom this person is associated by way of majority control or concludes such a contract with a member or executive employee of the legal
person or one of their relatives [Section 6:120 § 2]. At the third party’s request, the acquiring party is obliged to tolerate satisfaction from the acquired property and enforcement against such property [Section 6:120 § 3]. If the acquiring party alienated the property acquired through a fraudulent contract in bad faith, or lost the object of property in bad faith, he/she shall be liable for up to the value of the acquired property in respect of the third party [Section 6:120 § 4].

2. The third persons (this is called the fraudis particeps), who made a contract with another creditor’s debtor (this is called the fraudator) for a total or partial deprivation of the debts’ and claims’ financial cover, may stand in three different legal situations, in which there are more than one fraudis particeps since the advantage from the fraudulent transfer is acquired by a person other than the one who made the fraudulent contract statement (cf. Section 6:120 § 5):

- the fraudulent contract is made in favour of an already existing another third person;
- the fraudulent contract is made in favour of a yet non-existing another third person which comes into existence just through the fraudulent transfer (e.g. making a new foundation through making its fund available by a fraudulent conveyance or establishing a new firm by a fraudulent contribution);
- the asset of the debtor conveyed through a fraudulent transfer may also be acquired by a new extraneous person, if the first fraudis particeps further transfers it to another person [Section 6:120 § 4].

3. The monetary value of fraudator’s debt, the cover of which was deprived totally or partially by the fraudulent transfer, which is to be construed as a claim being the legal basis of the creditor’s demand against his/her debtor called the fraudator, shall be determinable. The legal title of this claim is, however, totally irrelevant. The determinability of the debt’s monetary value is indispensable, because the irrecoverability of the claim against the fraudator cannot be proven without this data. Scil. it is to be examined at first place whether the claim against the fraudator can or cannot be covered by his/her assets another than the ones transferred to a third person. If this examination results that the claim can totally be covered by other assets of the debtor, the transfer is not fraudulent, but if in the contrary, it is proven that the claim can only partially not be covered by another assets, the transfer is fraudulent.

4. With respect to fraudulent conveyances, there are two relevant points in time: the one is the time of the conclusion of the fraudulent contract, the other is the time of the submission of the action for taking a legal proceeding in the base of Section 6:120 by the defrauded creditor against fraudator and fraudis particeps. In order to determine whether the transfer was fraudulent or not, there are some prerequisites which are to be met:

- the creditor shall have a claim against his/her debtor (i.e. the future fraudator) at the time of the conclusion of the fraudulent contract;
- this claim shall be due and legally enforceable at the time of taking the action based on 6:120.

Thus, it is not necessary that the creditor’s claim is due and enforceable at the time of the defraudation, and that the creditor submits the action for enforcing the claim in court before the time of taking the action on the ground of 6:120.

5. Deprivation of the basis of satisfaction (cover): Irrecoverability. In accordance with the deprivation of the cover, the question, whether the fraudator’s residual assets can offer a total or only a partial cover for satisfying the creditor’s claims, shall be examined with respect to the time of the conclusion of the fraudulent contract. Only partial deprivation can establish the action in the base of 6:120. It is, however, an additional requirement that there shall be a causal link between irrecoverableness and fraudulent contract.

6. The legal consequence of creditor’s defraudation is that the fraudulent transfer shall be relatively ineffective towards the defrauded creditor. This is in favour of the defrauded creditor since the fraudulently transferred asset shall be the financial cover exclusively of the defrauded creditor’s claims who can find satisfaction from this very asset without standing in the queue of all of the creditors. (If the legal consequence of defraudation would be the invalidity of the contract, the in integrum restitution would result that the fraudulently transferred asset would return to the debtor’s property, and thus it would be the cover of the claims of the fraudator’s every creditor, who would have then queuing in a line of the claims’ ranking.)

Further consequences of the sanction of relative ineffectiveness are as follows:

- the acquiring party is obliged to tolerate satisfaction from the acquired property and enforcement against it;
- in case of loss and further transfer of the fraudulently transferred asset, the fraudis particeps shall be liable for up to the value of the acquired property in respect of the third party [Section 6:120 § 4].
VI

MOHAI, MÁTÉ

PERFORMANCE OF CONTRACT

1. General provisions

1. The passing of the risk of damage. Unless the Cc. disposes otherwise, the risk of damage passes on to the other party with the performance of the contract. Who bears the risk of damage, shall bear the liability for damages, for which no compensation can be demanded from anyone. For example, in the case of injuries to the animals during the unloading carried out by the obligee after the settlement, the risk of damage has already been passed to the obligee (BH1996. 527).

2. Quality of the service. The performance of a contract must be suitable with its designated purpose, which means that services, at the time when supplied:

– must be capable of any specific purpose defined by the obligee and which the obligee told the obligor at the time the contract was concluded;
– must be suitable for their intended purpose and in conformity with other, similar services;
– must be of a quality and performance that are normal in similar services and that the obligee can reasonably expect, given the nature of the services and taking into account any public statements from the obligor on the specific qualities of the services or—if produced by a person other than the obligor—the producer or their representative;
– must comply with the description given by the obligor and have the qualities of the services the obligor presented to the obligee as a sample or model; and
– must be in conformity with the quality requirements defined by the law [Section 6:123 § 1].

The services don’t shall conform to the public statements referred to in Paragraph c) of Subsection (1) if the obligor demonstrates that:

– he was not and he did not shall be aware of that statement;
– it had been adequately corrected by the time the contract was concluded; or
– the obligee’s decision to conclude the contract could not have been influenced by the statement [Section 6:123 § 2].

In accordance with Paragraph c) of Subsection (1), the manufacturer, the importer and distributor or any person who places his name, trademark or other distinctive sign on the thing is regarded as the producer of the service. By judging the compliance of the service with the intended purpose quality requirements shall be taken into account as well. If the parties have not defined the quality of the object defined by type and quantity, the performance must be in conformity with commercially available goods of standard of good quality [Section 6:123 §§ 3-5].

3. Documentation delivery. The obligor shall give the obligee all information description and other documents regarding the service provided.

4. Additional service. If the obligor offers to perform additional services than those in the contract, the obligee can refuse such additional services. If the obligee accepts those services as well, he shall provide additional compensation proportionate to the additional services received according to the provisions regarding the payment of the contract price in terms payment dates and methods.

5. Notification of hurdle. Where any hurdles seem to occur in the performance of a contractual obligation, the parties must notify one another thereof, unless the other party should have been aware of the hurdle even without notification. If the party fails to notify the other party of the hurdle, he shall be held liable for damages in accordance with the provisions on liability for losses caused by non-performance.

6. Obligation to examine performance. The obligee must examine whether performance is as contracted in terms of quality and quantity within the shortest possible time. The obligee doesn’t shall verify those qualities whose quality has been certified or those that are covered by guarantee. The costs of verifying
performance in terms of quality and quantity are borne by the obligee.

7. *Performance at the same time.* When the delivery date arrives, either party can demand from the other party the performance of due services if he offers to perform his own service at the same time.

8. *Employment of subcontractors.* The parties can employ other persons for settling their obligations or exercising their rights. If the obligor shall fulfil his obligations in person due to the nature of the service, to statutory provision or to the parties’ agreement, he can only employ other persons where this is necessary in order to protect the obligee from suffering any losses.

9. *Time of settlement of a monetary debt.* If the parties did not fix the time of payment, it shall be done within thirty days of receipt of the creditor’s request for payment or of receipt of the invoice. If an authority shall settle the debt in the case of a contract concluded with a party other than an authority, it shall be done within thirty days following the date of receipt of the creditor’s request for payment or invoice, in which case the date of receipt of the invoice cannot be the object of an agreement between the parties [Section 6:130 § 1].

The payment shall be done within thirty days after the creditor’s performance of the contract:

– if the creditor’s request for payment or invoice was received before the creditor’s performance (or the end of the procedure of acceptance or verification in the case of works contracts);
– where the performance of the creditor’s invoice or request for payment is not determinable; or
– where the debtor shall pay before the time of receipt of the creditor’s invoice or request for payment [Section 6:130 § 2].

In contracts between ventures, any contract term that is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unduly unfair to the creditor in derogation from the section 6:130. of the Cc. may be contested by the creditor alleging to find such clause as unfair. In the case of a contract concluded by an authority that shall settle the monetary debt with a party other than an authority, the payment due date fixed in the contract for the monetary claim may exceed the time limits referred to in Subsections (1)-(2) of 6:130 § of the Cc. only if the parties agreed to allow deferred payment of the monetary claim, provided that this is in fact justified on account of the nature of the contract, however, in these cases too, the payment due date for the monetary debt can’t exceed sixty days.

In the case of a contract signed by an authority that shall pay the monetary claim with a party other than an authority, the payment due date fixed in the contract is invalid in respect of the part exceeding a 60 day limit.

In contracts between ventures, where the period fixed in the contract for payment exceeds sixty days by way of derogation from Subsections (1) and (2) of 6:130 § of the Cc., unless proved otherwise it must be deemed contrary to good faith and fair dealing and must be regarded as unilaterally and unduly unfair to the creditor.

In the case of a contract between an authority that shall pay the monetary claim with a party other than a contracting authority, by way of derogation from Subsections (1)-(2) of 6:130 § of the Cc., where a deadline does not exceed sixty days and it is deemed contrary to good faith and fair dealing and as such regarded as unilaterally and unduly unfair to the creditor, it can be contested by the creditor alleging to find such clause as unfair [Section 6:130 §§ 3-4].

10. *Early settlement in the case of consumer contracts.* In contracts between a consumer and a venture any term excluding the early settlement of a monetary debt, and any term imposing extra charges on the consumer apart from the costs arising directly from early settlement are invalid.

11. *Reduction of the stipulated interest.* The court can reduce an unreasonable interest at the debtor’s request.

12. *Expense.* The consideration covers the expenses which are usually incurred in connection with the performance of the contract.

2. Specific cases of performance

1. *Performance in case of alternative services.* If the obligor can fulfil the obligation through any service among several ones, he is entitled to select the one for performance. If the obligee is entitled to select, but he is late in selecting, the right to choose transfers to the obligor.
2. *Performance in case of divisible services.* In case of divisible services, the obligee must accept a partial performance, as well.

3. *Performance of a contract concluded in favour of third parties.* If the parties have concluded a contract regarding services to be performed for third parties, the third party can require directly the performance of the service if:
   - this right has been expressly provided for by the parties of the contract; or
   - it is obvious because of the purpose of the contract or because of the circumstances of the case.

   The third party has the right to require performance of the service to be performed for him as of the date on which he receives notice of the contract from either party. If the right to require performance of the service is declined by the third party, the service can be required by the party who concluded the contract in his favour. The obligor can enforce his objections to the contract in respect of the third person as well.
1. Essence, Legal Consequences and General Provisions Relating to Breach of Contract

1. The purpose of every contract is to perform that obligation. The contract will accomplish its purpose when it is concluded in a specified place, time, manner and content as the parties agree in the contract included. If any of the content items of the contract is not fulfilled, i.e. performance of the contractual obligation fails, breach of contract is achieved.

The breach of contract is a legal institution relating to the performance phase of the contract, meaning the defect, disorder, disability of performance. Resulting that the breach of contract can be realized not just by the instances determined by law but also any conduct or other circumstances, which will result in the contract or its content not to be realized.

The breach of contract by its nature is objective fact, failure to comply with any obligation of the contract results in breach of contract. The contract is not realized by breach of contract, if the party does not receive the service according to the content of the contract, regardless of whether it is factors outside of the obligor’s behaviour, or the subjective or objective circumstances in the control of the obligor. The fact that the breach of contract is an objective fact, does not mean, that from the legal consequences of breach of contract in some cases would not be an exculpation.

2. The fundamental legal consequences of the breach of contract give answers to breach of contract of one of the parties, for a reason for which he bears the risk, and what rights the other party may enforce towards the obligor. The breach of contract penalty system is built on multiple levels, from general to the specific. The legal conditions relating to specific legal consequences affecting any breach of contract can be found within the general rules, from these the specific rules of named breach of contract cases may differ, supplemented with rules of specific named contract types.

The most basic, deducting from the onerous principle, objective and natural consequence of breach of contract is that there is no reimbursement for the unfulfilled service or for the part not fulfilled. This consequence is independent from the fact why the service was not realized, or whether the obligor is liable. In the contractual relation, breach of contract of the content of the contract applies -due to either behaviour, activity or omission, or happening independently- in itself, even without damages, irrespectively whether the contracting party exculpated himself. However, if breach of contract liability is established, further liability for damages may be enforced. Four essential rights in case of breach of contract:

- Right of requiring performance [Section 6:138 on the Civil Code],
- Right to withhold performance [Section 6:139 on the Civil Code],
- Withdrawal, termination [Section 6:140 on the Civil Code],
- Compensation for loss [Section 6:141 on the Civil Code]

Collateral applications of the breach of contract consequence, can be enforced together, if it is not mutually exclusive. Enforceable parallel are the withdrawal and compensation for loss, but exclusive are the requiring performance in nature and withdrawal.

3. Performance in nature: the legal consequence of a valid (effective) contract, based on which the performance can be claimed, and in case of breach of contract, the contractual performance through law (court) can be enforced. The Civil Code requires as a legal consequence in case of any breach of contract, that the injured party is entitled to claim the contractual performance in nature. Attached to the performance claim is the right of the obligee that in case of any breach of contract, has stipulated a reasonable due date for subsequent performance. If this period too elapsed without result further consequences shall follow, e.g. obligor’s delay, lack of conformity.
Execution in kind is excluded if it is *impossible or otherwise illegal for physical or legal reasons*. Execution in kind is excluded also if the obligee concluded a *contingency contract*, as the contingency nature of the transaction substitutes the performance in nature. There is no impediment, that the aggrieved party shall be entitled to require performance *linked to the person*, as it is just as enforceable as any other service. Not excluded to claim performance in the case of gratuitous contract, or in case of contract of gift, although in this case the obstacle of performance may be *clausula rebus sic stantibus* principle.

4. The right to withhold performance is handled by the Civil Code as a general consequence of breach of contract. The obligee shall be entitled to withhold his own performance as commensurate until the obligor has tendered performance not only in case of lack of conformity, but in any event of breach of contract. The withholding of performance is *not permanent but temporal*: the obligee shall be entitled to withhold his own performance as commensurate until the obligor has tendered performance or has provided adequate guarantees.

5. According to the Civil Code, the contract may be terminated unilaterally if in consequence of breach of contract, the obligee’s *interest in contractual performance has ceased*, and the acceptance of performance no longer is expected.

The withdrawal is retroactive to the date of concluding the contract, so the performed obligation may be requested to be returned by the withdrawing party. The restoration of original conditions may be applied, similarly to invalidity, if the conditions at the time of the contract concluding may be restorable naturally and the obligee is able to return the service.

In case of the irreversible services there is an inability to return the service, therefore in the event of breach of contract instead of withdrawal the contract shall be terminated. This applies to every instance where the law grants withdrawal rights but does not name specifically the termination. If the law does not order due date for termination, the termination is immediate.

6. It is a contingency contract, if the obligee—if he withdrew from or terminated the contract—shall be entitled to conclude a contingency contract to *achieve the objective of the original contract*. In the economy acquisition is a more frequent contingency transaction, however sometimes there are *sales contingencies*. The contingency contract serves to *repair* the damages cause by the breach of contract, its primary function is, to satisfy the legitimate interest of the non-contractual partner. If the partner of the non-performing party concludes a contingency contract, he may demand from the obligor to cover the difference between the contract price and the price quoted in the contingency contract, and the costs arising in connection with the conclusion of the contingency contract, under the principle of compensation of damages.

7. At the regulation of liability for any loss caused by breach of contract provision the Civil Code strengthens the rules on the exculpation of the non-performing party, cutting it off from the imputability principle applied by tort liability. To counteract the more stringent exculpation rules, the amount of damages for the loss caused by breach of contract, including lost income, foreseeable at the time of the conclusion of the contract is confined.

Limitation or exclusion of the consequences of breach of contract: the Civil Code breaks this regulation from the imputability however grants the exculpation in case of all *three conditions conjunctive existence*:

- circumstances of the breach of contract is outside of the control of the defaulting party
- to the defaulting party the circumstances outside of his control is -objectively- not foreseeable at the time of the conclusion of the contract
- it was not to be expected that the parties to avoid the circumstances hindering the contractual performance

The Civil Code in both liability cases *initiates from the principle of full compensation*. This principle applies without limitation to the damages *directly by the services* due to the breach of contract. The defaulting party is liable for the damage therefore shall perform full compensation for the damage in the service (adhesive damage)justified costs required for the contractual performance, of the contingency purchase (or contingency selling costs) etc. with these damages, as a possible consequences of breach of contract, the defaulting party always shall calculate in the event of breach of contract.
The financial losses and pecuniary advantage lost (lucrum cessans) caused by the breach of contract in the assets of the aggrieved party is part of the full compensation. The damages should, as far as possible, bring the aggrieved party into a position as would have been the case in the case of a contractual performance.

8. Interim breach of contract: during the performance, the party’s failure to take measures or make the statements as required is a breach of contract before the due date of the contract.

9. The essence of the premature breach of contract becomes obvious before the contracted date of delivery that the obligor will not be able to effect performance as due.

2. The Different Types of Breach of Contract

1. The obligor’s delay mean the breach of the content elements of the contract, namely the due date. An obligor shall be in delay if he does not perform his obligation when due. In any other case—if the time of performance of the contract is not settled—obligor is in delay if he does not perform his obligation after the necessary preparation time of the performance.

   Objective legal consequences of delay:
   - the obligee shall be entitled to require performance in nature
   - shall be entitled to withdraw from the contract
   - shall be entitled to terminate in legally named cases of the obligor’s delay

   The obligee shall prove the cessation of an interest in performance. It shall not be necessary to prove if according to the agreement of the parties or due to the imminent purpose of the service, the contract had to be performed at a definite time (fixed due date). If the obligee lawfully withdraws or terminates the contract, then hereinafter the general rules of breach of contract applies for the settlement and legal relationship of the parties.

   Compensation for damages due to delay: the obligor shall reimburse the obligee for damages caused by his delay, if it is in excess of the interest on late payment in the case of a monetary claim, unless the delay is excused. The obligee’s damage may be caused by as consequence damages of the delay of performance or during the delayed performance in the subject of the service.

   Delay in payment of a monetary claim is independent from the fact that the use of the monetary claim until the due date was complimentary or onerous. The rules of the delay in payment of monetary claim are dispositive, so the parties may freely agree on the amount of monetary claim. The capitalization of the delayed monetary claim is excluded.

2. Late acceptance by the obligee: if the obligee refuses to or does not accept the performance offered he is in delay. If the obligee is obliged to accept the performance before the due date, then the delay in acceptance occurs before the due date of performance. Consequences of obligee’s delay:

   - In the event of late acceptance, the obligor shall, under the principles of negotiorum gestio, be required to safeguard the thing, whereas risk shall pass on the obligee.
   - The damage risk, for which nobody can be held responsible—i.e. the risk of the damage threat - the obligee bears, even though the subject of the service is in the possession of the obligor.
   - The general provisions of breach of contract also rules to what extent the delay by the obligee excludes any simultaneous delay of the obligor.
   - The obligee -similarly to other named breach of contract- is liable for the obligor’s damages

3. The lack of conformity, as a breach of contract means when the obligor’s performance at the delivery date is not in compliance with the quality requirements laid down in the contract or stipulated by law.

   a) The legal consequences of the lack of conformity are assessed only in case of onerous contracts. In case of lack of conformity of gratuitous contracts according to the general breach of contract provisions receive mitigated liability for damages. Besides the warranty, the legal consequences of the lack of conformity may also be commercial guarantees, right to damages, warranty of title—in case of a contract between consumer and business party- product guarantee. According to the burden of proof principle, the burden of proof of lack of conformity is on the obligee. The obligee shall prove that, any lack of conformity detected by the consumer existed at the time of delivery of service (or goods).
b) The warranty is the objective legal consequence of the lack of conformity; the obligor is liable for the lack of conformity - regardless if it is exculpation. The obligor is liable due to the extent of the business risk covers any activity-related disorder. The warranty is the legal consequence of lack of conformity, in which the obligee of the onerous contracts is entitled to claim reparations for defect occurring in the service, resulting in decline of value of his performance interests. The obligee shall enforce his claim only against the obligor of the specific contract. This is a marker in the case of the service is delivered to the obligee through more intertwined contracts.

Relating the warranty the Civil Code priorities unambiguously the warranty rights ensuring performance in nature. The option between warranty rights (ius variandi): On the base of warranty rights, the obligee shall have the option: the chosen warranty right shall be clearly and unmistakably determined by the obligee. The obligee shall be entitled to switch from the warranty right he has selected to another. The cost of switch-over shall be covered by the obligee, unless it was made necessary. On the base of warranty rights, the obligee shall have the option to choose either repair or replacement as a first step. Unless compliance with the chosen warranty right is impossible or it results in disproportionate expenses on the part of the obligor as compared to the alternative remedy, taking into account the value the service would have had there been no lack of conformity, the significance of the breach of contract, and the harm caused to the obligee upon compliance with the warranty right.

As the second step, the obligee may ask for a commensurate reduction in the consideration, repair the defect himself or have it repaired at the obligor’s expense, or to withdraw from the contract.

The Civil Code orders the obligee’s right to warranty shall lapse after one year from the delivery date. In connection with contracts that involve a consumer and a business party, the obligee’s right to warranty shall lapse after two years from the delivery date.

c. The essence of the product guarantee is that, the manufacturer has a guarantee obligation to the consumer for the lack of conformity at the time of product sold. A product shall be deemed defective if it does not meet the requirements related to conformity in effect at the time of placing on the market, or it does not meet the specifications provided by the manufacturer. The consumer - instead of the warranty rights against the vendor with whom he is in direct relation, escaping the relative structure of contracts, intersects the contract concatenation- directly claims guarantee rights against the manufacturer.

The main difference between product guarantee and warranty guarantee is that it does not serve to repair the defects of the product (adhesive damage) but reimbursement of personal injury in correlation with the product defects.

d. Commercial guarantee: while the warranty without the parties agreement by law is connected to lack of conformity, and the guarantee is undertaken voluntarily in order to perform errorless. Undertaking the commercial guarantee means a more stringent obligation than the warranty. Both rule are objective in nature, i.e. the obligor cannot exculpate himself from the warranty nor the commercial guarantee, the commercial guarantee however is a more stringent obligation form due to the burden of proof. In case of warranty the errorless performance is presumption: the obligee shall prove that the service was defective at the time of performance, whereas in case of commercial guarantee the presumption is the defective performance. The burden of proof changes and the obligor shall prove, that the cause of the defect arose after performance.

e. Damages may be claimed primarily in the scope not covered by warranty for consequential damages. This claim applies to any type of damages (actual damages, loss of profit, costs) including the damages resulting from price differences.

The obligor shall be excused of liability - according to the general rules of contractual liability- if lack of conformity has its origin due to an unforeseeable and unavoidable circumstance outside its control. The liability for damages in terms of excuse is stringent, however compared to warranty it is still milder, in theory it is possible, that the obligor proves: the lack of conformity and the damages resulting from it, was caused by unforeseeable and unavoidable reasons (for example unforeseen vis major circumstances, weather conditions), thus exempt from the liability for damages, but not from warranty.

f. Warranty of title: the obligor is to perform not just without physical but legal defects, in the absence of this, it is a breach of contract just as much as it would be with physical defects. If the acquisition of ownership, other right or claim is hindered by a right of third parties, the obligee shall withdraw from contract - according to the general rules of breach of contract- or in case of irreversible service the obligee shall be entitled to
terminate the contract and to claim damages—according to the general rules of contractual liability for damages.

4. **Impossibility of performance**—the impossible contract from onset is a question of impossibility (!) specifies the instance if performance has become impossible, due to circumstances after concluding the contract. The party gaining knowledge of the impossibility of performance shall immediately notify the other party thereof regardless in whose control the impossibility occurred or whether he is liable for damages. If performance has become impossible, the contract shall be terminated.

If performance has become impossible for a reason that cannot be attributed to either of the parties, the services performed shall be settled. The monetary value of the services provided before the time when the contract was terminated shall be compensated, provided that the service is not indivisible, and so it is suitable to partially satisfying the needs of the entitled. If the service is indivisible, thus partial performance did not take place until the termination, for which cash compensation shall be payable. If the remnants of the object of a service that has become impossible have remains in the possession of the obligor in full or in part (divisible service), or if the obligor has received or has the right to demand compensation instead of the object of the service from another person, the obligee shall be entitled to demand surrender of the remainder or compensation against a commensurate part of the consideration.

The obligee is entitled to claim residual service (residuum) and the compensation (surrogatum) replacing the subject of the service, for proportional compensation, regardless which party is liable for the impossibility.

5. **Withholding performance**: The law names withholding performance without legitimate reason as an independent breach of contract instance. Either the obligor or the obligee can maintain such conduct. If the obligee withholds performance without legitimate reason for the contractual service, the other party shall be entitled to apply the consequences of either delay, or subsequent impossibility.

6. **Failure to make legal statement**: If the party is required under the contract to make a legal statement, (Prohibition of abuse of rights, Article 1:5 on the Civil Code) and fails to do so, the statement shall be drafted by court verdict, thus the court enforcing the contractual performance. The contractual will to a make a legal statement, so the obligation from the obligor does not shall exist, the court is not replacing the obligation.
VIII

FABÓ, TIBOR

CONFIRMATION OF CONTRACT

1. Confirmation of Contract in General

1. Protection of the Contractual Interest. The Civil Code of Hungary contains general rules on the breach of contracts. These provisions are applicable in any types of contracts. We can see some other rules of breaching a contract among the provisions of the special types of contracts. There is no need to stipulate these consequences since all these provisions shall be the part of the parties’ agreement provided, they did not exclude the applicability of those. In addition, the parties themselves can agree upon additional legal consequences in the interest of increasing the level of the protection of their contractual interest. Stipulating earnest money, contractual penalty and forfeiture clause are available for motivating the parties to comply with the terms of their contracts since those impose additional obligations on the party who violates the contract.

2. Collateral Relation between the Contract and the Instruments of Confirming It. In this context collateral relation refers to the condition that for the validity of the stipulation of all these analysed instruments requires an existing and valid contract containing such obligations the enforceability of which is provided by the law. Should the contract suffer in lack of existence or is null and void the confirmation of the contract must not and will not be valid.

3. Earnest Money, Contractual Penalty and Forfeiture Clause As Consequences of the Liability for Breaching the Contract. All these legal institutions join to those violations of contract where the party is liable for the breach of contract, that is to say, the party cannot prove that the violation occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage. Earnest money and contractual penalty serve as compensation for the suffered damages up to the stipulated amount of those. The party shall have the right to claim this amount even if there was no damage at all. Should the caused damage be higher than the stipulated amount the party shall prove it for receiving the total compensation of his damages. Forfeiture clause does not result a claim for damages but the party violating the contract shall loose certain right(s) which otherwise he would be entitled to have.

4. Judicial Correction of the Excessive Sanction. The excessive deposit of earnest money, excessive contractual penalty may be reduced by court at the obligor’s request and if the forfeiture of a right afflicts the obligor excessively, such adverse disposition may be mitigated by the court.

2. The Earnest Money

1. Notional Elements, Marking Off Earnest Money, Advance Payment and Retention Money. Earnest money shall be an amount stipulated by the parties and to be paid for the other party at the time of coming into existence of the contract (or even later but before the due date of the performance of contractual obligations). This amount serves as a safeguard of the parties’ contractual interests provided this intention is expressly indicated in the contract. Advance payment is just a part of the performance of the contract not having any safeguarding function. In case of any doubt the paid money shall be deemed advance payment. Retention money is due according to the agreement of the parties when one of them has the right of unilaterally terminating the contract and the party takes the advantages of this right.

2. Legal Effects of Stipulating Earnest Money. Should the contract be performed the earnest money shall be credited to the amount payable. Disadvantageous legal effects will appear where frustration of the contract occur and one of the parties is responsible for this. (In this context frustration does not mean just the impossibility of performance. Frustration can also happen when the party is in delay and the other party is entitled to and in fact terminates the contract because of it.) The person responsible for the failure of performance shall forfeit the earnest money that he has given, or refund twice the amount of the earnest
money he has received. If the contract falls through for reasons attributable to neither or both of the parties, the earnest money shall be returned. Even if the party gave back the received amount or paid the double of the earnest money this shall not constitute an exemption from the consequences of the breach of contract (e.g. the party shall have the right for demanding performance).

3. The Contractual Penalty

1. *Notional Elements, Characteristics.* Stipulating contractual penalty one of the parties or either both parties undertake the obligation of paying the agreed amount of money where the party violates the contract and he is not able to prove that he is not liable for that. Penalty shall be paid following the violation happened (unlike earnest money which is due in advance). Penalty is similarly as earnest money concerning its compensatory function. Penalty is also due even if there is no damage at all because of the violation of the contract. The expression of “lump sum minimum compensation” refers to this characteristic. Where the damages are higher than the amount of penalty the violated party shall prove the exact amount of his damages.

2. *Stipulation of Contractual Penalty.* Formation of contractual penalty requires written declaration where the parties determine which type of violations of the contract shall result the obligation of paying penalty and the amount or at least how they will calculate the amount of that. Any type of non-performance, breach of contract can serve as a basis of penalty. Usually delay in performance, lack of conformity or frustration of performance are those violations where the party agree upon contractual penalty which can be a determined amount of the value of the service or a certain percentage of it depending on the time of delay period. In certain cases, usually because of protecting consumers’ interest, contractual penalty becomes the content of the contract because of so-called cogent (mandatory) statutory provisions.

3. *Relation of Contractual Penalty and Claims Based on Breach of Contract.* Depending on the type of violation of the contract the obligor shall decide whether he enforces the penalty or requires the fulfilment of contractual obligations. In other cases, the penalty claim and the claims based on the violation both can be enforced. For example: enforcement of contractual penalties stipulated for non-performance precludes any demand for performance, but payment of contractual penalty stipulated for late performance shall not constitute an exemption from performance. In addition to contractual penalty for lack of conformity, the obligee shall not be entitled to make any guarantee claim.

4. The Forfeiture Clause

Should the party of the contract violate the contractual rights of the obligor, as a result of forfeiture clause this party shall lose certain right(s) or advantages provided by the contract. Delay in performance may lead to losing the instalment opportunity. Omission of informing the other party on the failure of performance in time may result lack of warranty. Forfeiture of those rights which the law does not allow to give up (e.g. legal capacity, right for life and for human dignity) shall be null and void.
The significant service of these contracts is transferring ownership rights for money (or other thing) or for free, that is to say “dare” (to give) obligations like sales contracts, exchange contracts and contracts of gift. First the general rules of the sales contracts than the rules of special modes of sale, types of sales contracts than the rules on exchange contract and contracts of gift can be found in this part of the Civil Code.

2. Basic Rules of Rights In Rem; Certain Aspects of Law of Obligation

1. The Way of Acquisition of Ownership (Modus); Legal Title (Causa). All the above contracts the purpose of which is transferring ownership can result the acquisition of the ownership provided the requirements of rules of the rights in rem (ius in rem) also are realized. In the interest of acquiring ownership of a thing the Hungarian private law requires a legally accepted (provided) way of acquisition (“modus”). “Modus” involves those legal facts which are necessary for acquiring the ownership of a thing. Among the different types of these ways the acquisition by transfer is relevant from the view of the analysed types of contract.

The necessary legal facts of the transfer are as follows: the transferor shall be owner of the thing and there shall be a legal title (sale contract, contract of gift, etc…) which serves as a legally accepted purpose of change in ownership rights. Provided the subject matter is a movable there shall be transfer of possession of the thing as well. In case of an immovable the acquisition of ownership requires not the transfer of possession but the registration of the new owner at the land register. Transfer of possession is “just” a contractual obligation of the seller but not the condition of acquiring ownership of the immovable. Causa, legal title is a legal abstraction which refers to the purpose of the transfer: what is the intent of the parties in course of transferring and acquiring the ownership? The purpose can be e.g. receiving money for a thing (the legal title is contract of sale). The contracts for transferring ownership serve as legal titles of the transfer.

2. Transactions in Course of Transferring Ownership Rights: Commitment Transactions and Disposal Transactions. Acquiring ownership rights (in the same time fulfilment of the obligations of the transferor) requires the expression of transactional intent on the one hand in course of concluding the contract that provides the legal title (causa), from the other hand in course of transferring the possession of the thing. According to the Civil Code passing over the thing, transferring the possession of it (as fulfilment of the commitment transaction) has transactional (contractual) nature and it is considered as so-called disposal transaction.

In case of immovable transferring the possession as a transaction (together with the commitment transaction providing the legal title, causa) is the fulfilment of one main obligation of the transferor, only, which shall be completed with the other main obligation: providing permission of the transferor allowing the registration (in land register) of the ownership of the transferee (permission for entry, a statement of authorization for registration from the right-holder). This is a unilateral disposal transaction which is the condition of registering the ownership of the new owner. Provided the registration, happens the transferor fulfilled his obligation of transfer of ownership.

3. The General Rules of the Sales Contracts

1. The substance of this contract is transferring ownership right of a thing against money. The Civil Code first gives general rules of the type describing the main obligation of the parties: the seller and the buyer. Then the rules of special modes of sale (right of pre-emption, repurchase right, purchase option and right to sell, hire purchase, purchase upon delivery subject to inspection, purchase upon delivery subject to testing, purchase by sample) can be found in the Code. Specialties of these contracts can be found in
the way how they are come into existence or the way how they become effective or the specialties in payment rules. The rules of sales contracts end with the provisions of the subtypes of sales contracts (forward transactions for the sale of things defined by type and quantity, sales contracts for the supply of own produced agricultural goods, sales contracts for the supply of agricultural goods produced with the buyer's involvement). These subtypes' main characteristics are in subject matter of those: the things are either generic things or restricted to things having special features. The deadline rules of performance of the contract or special provisions concerning the allocation of the contractual risks when the quantity of the subject matter of the contract will not be enough for performing the contractual obligations are also playing a role in these subtypes of contracts.

2. From the view of validity usually there is no need for written contract when the subject of a contract is movable. When immovable is concerned the contract shall be concluded in written form.

3. Anybody who has legal capacity can be either seller or buyer. When seller is an enterprise and the buyer is a consumer there shall be special rules employed on their sale contract which are more favourable for the consumer.

4. Under sales contract the seller undertakes to transfer the ownership of a thing to the buyer, and the buyer undertakes to pay the price thereof, and to take possession of the thing. In course of selling a real estate property, in addition to transferring ownership the seller shall also transfer possession of the thing and the contract shall be executed in writing [Section 6:215].

5. Parties can agree upon entitling the seller to retain title of ownership until the purchase price is paid in full. This agreement shall be executed in writing and in the base of that contract relating to real estate property, the seller shall have the retention of the title recorded in the real estate registered together with the name of the buyer. In case of movable property, the seller shall have the retention of the title registered in the collateral register or in the relevant registry if ownership of the movable property is recorded in a public register and if hypothecation of the thing is to be registered in the proper registry by law.

4. The Special Modes of Sale

1. Right of Pre-emption. Right of pre-emption can based on the written agreement of an owner and the other party or established by the law (statutory pre-emption right). The latter prevails the contractual right of pre-emption related to the same thing. In both cases the point of these special modes of sale is that the owner of the thing should not sell it to any third party before communicating the offer in full the person who has the right of pre-emption on the conditions fixed in the offer of the third party. The holder of pre-emption right can establish the contract of sale with the owner of it by accepting the offered conditions within a certain binding period even if the owner would not like to sell the thing to the holder of this right. If the holder of pre-emption right fails to issue a statement of acceptance during the binding period, the owner shall be entitled to sell the thing according to the offer received from the third party or under terms which are more favourable for the seller. If the owner breaches his obligations and enters into a contract with the third party, such contract shall be inoperative in respect of the holder of the right of pre-emption who shall be able to enforce his claims arising from such nullity within thirty days after gaining knowledge thereof. In the same time, he shall make a statement of acceptance, and verify his ability to perform.

2. Repurchase Right. This right makes possible for the seller of a thing by way of unilateral statement of him/her to repurchase it from the buyer of that. Establishing this right, the buyer shall grant this option for the seller at the time of conclusion of the written sales contract. Having this right, the earlier seller may purchase the thing by way of a statement made to the buyer.

3. Purchase Option and Right to Sell. These rights can be based also either on written contract or established by statutory provisions. If somebody becomes the holder of the right to purchase a specific thing, he shall be entitled to buy the thing with a unilateral statement. The holder of the right to sell a specific thing shall be entitled to sell the thing with a unilateral statement to the obligor of the option to sell. In both cases the price shall be fixed in the contract establishing the option.

4. Hire Purchase. Specialty of this contract is that based on the parties' agreement, the buyer shall be entitled to pay the purchase price in several instalments at specific dates, and the possession of the thing is transferred to the buyer before the purchase price is paid in full.
5. **Purchase upon Delivery Subject to Inspection, and Purchase upon Delivery Subject to Testing.** The rules of both special types concern the effect of the contract. The parties conclude the contract before the buyer could inspect or test the thing. According to their agreement the seller shall provide the opportunity of investing or testing the thing for the buyer who shall have the right to decide whether he wants their contract to be effective which depends on his unilateral legal statement. If the buyer does not make any statement following the investigation within a proper deadline the contract shall not be effective. If the buyer tested the thing and does not make any legal statement within a proper deadline the contract shall be effective. In both cases the buyer has the chance to know the characteristic of the thing therefore the seller is not liable for any lack of conformity if able to verify that the buyer has detected, or should have detected, the defect upon the inspection or test.

6. **Purchase by Sample.** In course of concluding the contract the parties can decide to define a certain characteristic of the subject matter of the contract by reference to a sample, too. The seller shall supply such thing which corresponds to the cited properties of the sample and he shall be liable for any latent defect in the thing if the defect also existed in the sample.

5. **Sub-Types of the Sales Contracts**

1. **Forward Transactions for the Sale of Things Defined by Type and Quantity.** The main element of this type is that the parties agreed upon selling and buying things defined by type and quantity, in the future. The subject matter of the contract can be industrial or agricultural product as well, but it is not matter who produced the thing or what is the origin of those. The essential terms are: the supply shall happen in the future and with things defined by types and quantity. If performance has become impossible because of any reason (beyond the behaviour of the buyer) the risk is on the seller who shall perform anyway if there is such type and quantity on the market that the contract requires. Since it can happen that the buyer will not need for the ordered things, the buyer shall have the right to withdraw from the contract provided the seller has not yet offered the delivery of supplies. Although this withdrawal is allowed by the law the buyer shall reimburse the damages caused to the seller through exercising the right of withdrawal.

2. **Sales Contracts for the Supply of Own Produced Agricultural Goods.** The emphasis of this subtype of contract is on the origin of the agricultural product: it is the seller who shall produce it. He shall supply agricultural goods and/or produce of his own production or livestock that he himself has raised at a future date. If his own agricultural production is not enough for supplying the contractual quantity and the reason of that failure is out of his liability (vis maior) he will not be responsible for non-performance.

3. **Sales Contracts for the Supply of Agricultural Goods Produced with the Buyer’s Involvement.** The characteristics of this type are similarly as the above-mentioned contract with the addition that in this case the buyer himself contributes somehow by providing the assistance for facilitating performance of the seller and to provide information to the seller in that context (giving advice, providing loan, sowing, fertilizer, etc.) The seller shall cooperate with the buyer in the provision of such service by following the instructions communicated. The seller shall pay the contracted price for the buyer’s service and shall repay the part of any production advance received from the buyer that is not covered by the purchase price even if the production result is insufficient to cover such payments.

6. **Exchange Contracts**

The parties of exchange contract undertake reciprocal transfer of the ownership of things. In such cases each party shall be deemed as the seller in respect of his own service and the buyer in respect of the other party’s service and the provisions pertaining to sales shall be duly applied.

7. **Contracts of Gift**

1. **Basic Notions of Gifts.** A contract of gift means any contract under which the donor (i.e. gift-giver) undertakes to transfer the ownership of a thing without any consideration, and the donee (i.e. gift-receiver) undertakes to take possession of the thing. If the object of the contract of gift is a real estate
property, in addition to transferring ownership the donor shall also transfer possession of the thing; in this case, the contract of gift shall be executed in writing. The provisions relating to gifts shall also apply to contracts for commitments for the gratuitous transfer of rights and receivables.

2. Withholding Performance. The donor shall be entitled to refuse performance of the contract if he is able to prove that his performance of the contract can no longer be expected due to a significant change in his circumstances or in his relationship to the donee after the contract has been concluded.

3. The Recovery of Gifts. At first, it shall be emphasized that gifts of ordinary value shall not be reclaimed. The donor shall be entitled to recover a still existing gift insofar as the gift is considered essential for his livelihood on account of changes in his circumstances after the conclusion of the contract and returning the gift does not jeopardize the livelihood of the donee. The donee shall not be obligated to return the gift if subsistence of the donor is appropriately provided for in the form of alimony or other similar maintenance provided in kind. If the donee or his resident relative commits a serious infringement to the detriment of the donor or one of his close relatives, the donor shall be entitled to reclaim the gift or demand the replacement value of the gift. The donor shall also be entitled to recover a gift or demand its replacement value if the assumption known to the parties at the time of conclusion of the contract, that provided the sole basis for giving the gift subsequently and permanently, disappears and if the gift would never have been given without this assumption. A gift cannot be recovered if the gift itself or its replacement value no longer exists at the time of the infringement or if the donor has condoned the injury. The donor's failure to reclaim the gift for an extended period of time without an appropriate reason shall be construed as forgiveness and/or waiver of the right of recovery.
1. The contracts for professional services are aimed at the services, *performance of activities for someone else*, in which *beyond the performed activities, the contractor undertakes the risks of achieving the result, the remuneration, the contractor’s fee payment is a prerequisite of the production of result*. The general rules of the contracts for professional services *apply—regardless the nature of the service, the specificity of the activity—to all named subtype s of the contracts for professional services*, such as:

- Design contract
- Construction contracts
- Research contract
- Contract for travel services
- Agricultural services contract
- Public service contract.

2. The professional service activity reflected in the general rules usually refers to the *individual behaviour that performed in order to achieve results based on expresses individual wishes*, which can be continuous, regular, recurring.

3. Beyond the specific service the obligation of result is the other essential element. The contractor’s fees are paid then and only then if the contractor achieves the result undertaken in the contract; the contracted fee is payable at the time of the fulfilment of the contract. The fulfilment of the result is part of the contract and, therefore *there is no fee paid if regardless the diligence of the contractor or because of objective reasons it is not satisfied*.

The obligation for result is not identical with the responsibility for result. *The leeway of the results only concerns the fee requirement in itself, however, it does not cause the liability consequences of breach of contract, only if it is the result of the contractor’s breach of contract.*

4. The contracts for professional services are characterized by *performance’s multi-phase nature*, it does not *mean a single legal action*. The individual phases can be *divided into two parts*:

- One part is the *contracted activity*
- Other part is the *delivery of results* produced by it

5. The *rights and obligations* of parties: The contractor shall arrange the conditions -work place, work equipment, materials, and subcontractors, contributors- for carrying out the activity so as to ensure that the works will be completed safely and professionally in due time, in a manner that is economically viable. The contractor shall perform the activity with its own employees as well as *without the consent of the customer* shall employ *subcontractors*. To create the material and personnel conditions means any material that is required for completion of the works shall be *obtained by the contractor at its own expense*. The regulations are, however, dispositive, therefore the parties may differ from the main rules and may agree that as the work progress, before the result is produced, according to the stage of completion of the work fees are paid in the form of advances.

6. *Customer’s right to give instructions*—in case of a contracts for professional services- no instructions shall be given for the *organization of work*. The new demands on the one hand cannot make the fulfilment *unreasonably burdensome, especially cannot result in a completely different work-result*, on the other hand the *fee of the hand extra work (see below) can be demanded*. The customer’s layman expectations, instruction may be professionally, *uneconomic, unreasonable, not feasible, illegal* may carry out the works according to the customer’s instructions, at the customer’s risk. The contractor is *acquitted from legal consequences of defective
performance if the defect is resulted from the unprofessionalism or unreasonableness of instructions of which the contractor warned the customer. The customer inspects whether the contractor fulfils its duty according to the content of the contract and instructions.

7. The customer’s “unlimited” withdrawal and termination right means with a one-sided statement the customer shall be entitled to withdraw from the contract only before the beginning of performance, cannot be withdrawing from a contract terminated by performance.

8. The contractor shall perform in conformity with the contract, but this cannot be handled rigidly. The contractor may not refuse those subsequently incurred works, which are based on the new orders, or necessary to the production of results and justified. These only have effect on the fees. Subsequently occurred works are:
   - Extra work, the works ordered subsequently
   - Additional work,
     - works included in the plan but not taken into consideration for the calculation of the contract price;
     - work that is considered essential for the completion of the works in a condition proper for use or the intended purpose, not calculated in advance

The extra work is solely the work ordered by the customer after the completion of the contract, (supplementary order) means the new and different, more costly demands of customers which usually occurs in the form of plan amendment.

The additional work opposed to the extra work is not arising from a new or modified customer order, because the originally targeted result of the contract will not change but compared to the prior estimated it can be achieved only by additional work and additional costs. Additional work was already included in the content of the professional services contract plan documentation (schematics, technical description) however in calculation of the contractor’s fee it was not sufficiently foreseen work items, which therefore have additional costs.

9. The contract price determination is a relevant content requirement of the contract for professional services. If the parties have not agreed upon contract price, the contract for professional service is not concluded, service will not be required, and the legal consequences of the absence of the contract applies. The agreement on the fee can be made in two ways. The parties may determine the contract price:
   - upfront in a fixed sum, so-called flat rate
   - or may agree ex post lump-sum settlement

10. The rules of breach of contract: following from the nature of result obligation of the contract for professional services, that the contractor takes the objective risk of the leeway of results (lack of performance). If the result is for any reason cancelled, the contract for professional services objectively fails, the contractor’s fee shall not be entitled. In the event of non-execution the contractor shall be entitled for fee in two cases:
   - the cause of impossibility has occurred within the control of the customer, the contractor is entitled to the full price, but has compensation obligation.
   - the cause of impossibility has occurred within or beyond the control of both parties, the contractor shall be entitled to a proportionate amount of the remuneration for the work done and for his expenses, not for the full amount, but only to the extent that the customer has intervened in the failure. If impossibility has occurred within the control of the contractor, he shall not be entitled to demand remuneration.

2. Sub-Types of the Contract for Professional Services

1. Design work as an activity based on the design contract aims at:
   - construction-installation work plan, i.e. to create a structure, rebuilding of an existing building, the plan preparation relating to alteration, repair, demolition.
   - technology and installation plan preparation, i.e. mechanical, industrial equipment, technological processes design
   - other technically feasible activity to design (for example, gardening work, soil melioration)
   - further data detection to facilitate planning (for example, soil mechanics, geodesy, water exploration studies)
   - preparation of a prior plan, which by raising multiple variants provides an opportunity for selection
- professional review for already completed plan or
- revision, site adaptation of a completed plan

The design documentation for construction shall be implementable, which means that the completed facility in compliance with plan is suitable for its intended use. The result of the design quality errors is if the applied technical solution is unreasonably expensive, in excess, or unreasonable.

2. On the base of a construction contract the building contractor undertakes to carry out building of specifically designed facility, other things, buildings, his service is in the execution of plan documentation. The result specified in the contract may be:
- new building or other structure, building unit created based on the construction plan
- also, in the base of the technical plan partial or complete rebuilding of existing structure, overhaul, maintenance and repair, breakdown (so-called investment, maintenance work)
- machine, power transmission, calculation—news—and ventilation equipment, technological and other wiring, plumbing, transport equipment technological mounting and
- any activity produced result of which process is determined by technical design
The construction journal is among paramount importance to the construction plan:
- the cooperation of parties
- disclosure of obstacles
- information
- exercising the right of inspection

The result of the construction process is transferred through a technical transfer procedure, the execution of which is governed by the specific law. According to this, at completion of the construction work the contractor reports as finished, and notifies the purchaser, which date to deliver the work result.

3. The research contract is a contract of pecuniary interest but not necessarily obliged of result! The researcher can undertake a research result as a service, but it is also possible that he does not undertake research results. For this reason the research contract is on the border of professional service contracts and assignment contracts and to a certain degree -although named professional service contract- is a mixed contract. From one aspect the research contract has complete obligation of result. The researcher is obliged to pour his intellectual creative activity into a protectable intellectual creation (performance).

4. Contract for travel services is regulated by the Civil Code as a sub-type of professional service contracts. Although the travel contract services physically can be split up, however, they are legally indivisible, since the part services alone are not suitable to satisfy the client’s contractual interest, that’s why the contract breach affecting the travel’s purpose, due to the indivisible nature, supervene on the entire contract. Under a contract for travel services the contractor undertakes to make arrangement for travel and for accommodations at points of excursion and to provide the related services [Section 6:254 (1) on the Civil Code]. Requirement is the written form, and the contract position is transferable. These rules are unilaterally (claudication) cogent, any contract clause that derogates from the provisions to the detriment of the consumer shall be null and void. [Section 6:254 (5) on the Civil Code]

5. Agricultural services contracts appear in the Civil Code as a new sub-type. The essential element of the agricultural services contract is that, the land on which the producer undertakes to produce specified in the contract, vegetation, product, crop, propagating material, etc. is the property of the customer so the product of the crop from the beginning, and through the production process does not become the producer’s property, so property transfer does not occur. The agricultural services contract’s obligation of result: the producer is only receiving the fees, if performs the agricultural activity specified in the contract, and produces the contract results. There is an increased importance of the parties’ cooperation obligations.
1. Legal Regulation of Carriers’ Activities

Not only the Civil Code but other rules (government decrees and international treaties) are also relevant as legal sources of regulating these activities. In Hungary there are special decrees on carriage depending on what type of vehicle (truck, aircraft) the carrier employs. Due to this circumstance and due to the fact of globalization of the carrier activity regulated by international treaties the Code Civil itself shall be applied when the special rules, treaties do not contain different provisions. The carriers usually elaborate their general terms of contracts in which they are going to standardize the legal conditions of their operation.

2. Legal Definition, Characteristics, and the Conclusion of Contracts of Carriage

Contract of carriage is such a “result oriented” obligation (i.e.: fee is due when the goal of the contract was achieved, only) in the base of which the carrier shall transport the consignment to its destination and deliver it to the consignee while the consignor shall pay the fee agreed upon.

The contract itself has two subjects, the carrier and the consignor but the activity of the carrier concerns third parties, the consignee, too. The latter is not subject of the contract with the carrier. He has legal relationship usually with the consignor who employed the carrier in the interest of performing a contractual obligation he undertook towards the consignee. It can also happen that the consignor and the consignee is the same person (the seller sends the bought goods for himself via carrier).

We shall differentiate between on the one hand the contracts of carrier on the other hand the shipping contracts. Contracts of carriage together with shipping contracts as legal frames of these activities play definitive role all over the world in organizing the flow of goods. Under a shipping contract the forwarding agent undertakes to conclude contracts and to make legal statements relating to shipments in his own name and on the principal’s behalf for the agreed fee. This agent provides complex service which can involve even the forwarding of the goods with his own vehicle as well, but the point is that the agent shall organize the forwarding activity such a way that he shall conclude the necessary contracts (with carriers, storehouses, insurer companies) and make declarations such as custom declarations. The carriers themselves often carry on forwarder activities, too and as a result of this the integration of the characteristics of these services significant.

There are no special rules concerning how to conclude these contracts. The general rules of contracts shall be applied. For the validity of the contract there is no need for written form even if the special decrees require preparing a so-called consignment note. In itself this is not a contract but if it meets the requirements of the rules of Civil Code or the applicable government decrees, it provides a presumption in favour of the existence of the contract of carrier and proves the receipt of the consignment, and—in the absence of any reservation made by the carrier in the consignment note—that the consignment and its packaging at the time of delivery was apparently in a good condition, and that the amount of the consignments coincides with the one shown in the consignmen note. Concluding the contract, the parties shall agree upon the quantity of the consignment, the location of receipt, the destination, the person of consignee and the fee of carrier.

3. Parties’ Legal Statuses within the Contractual Obligation

1. Rights of the carrier are as follows:
– to transport the consignment to its destination and deliver it to the consignee;
– if so instructed by the consignor, he shall make out the consignment note and provide a copy to
the consignor; or give an acknowledgement of receipt of the consignment;
– to present means of transport at the place and time stipulated in the contract, in a condition suitable for carriage and to commence carriage without delay;
– if carriage is in any way obstructed, the carrier shall immediately notify the consignor and ask for instructions where deemed necessary;
– to notify the consignee immediately of the arrival of the consignment.

2. The rights of the carrier are as follows:
– to demand the fee for his services (in certain cases just a part of it)
– as regards loading and unloading, the carrier shall have the right to give instructions as to the placement of the consignment
– to refuse to accept the goods for carriage when the consignor does not fulfil his obligations concerning the packaging and providing necessary documents or as regards the dangerous goods and shall be entitled to terminate the contract
– he shall be entitled to statutory lien up to the amount of freight charges and expenses on the things he gained possession of in connection with carriage, or which are at his disposal in the base of documentary evidence

The carrier shall be liable for the violation of the contract according to the general rules of contractual liability of the Civil Code. Any contract term limiting or excluding the carrier’s liability shall be null and void, also if it pertains to damages caused deliberately or as a result of gross negligence.

3. The Consignor’s Obligations, Rights, and Liabilities. The consignor shall pay the fee agreed upon provided the carrier transported the consignment to its destination and delivered it to the consignee. In the event of loss or destruction of the consignment in part or in full and the carrier cannot prove that he is not liable for that the consignor shall have the right of repudiating of payment in part or in full.

The consignor shall:
– package the consignment in a way to provide sufficient protection for the goods and prevent it from jeopardizing the physical safety or property of others;
– give information necessary for handling the consignment on the packaging, or failing this on the consignment itself; and
– hand over to the carrier the documents necessary for transporting and handling the consignment;
– The consignor shall be liable toward the carrier for the loss or damage resulting from discrepancies in packaging, or from the lack or inaccuracy of, or any flaws in the data, information and/or documents relating to the consignment.

4. The consignor shall be entitled
– to withdraw from the contract prior to the commencement of carriage,
– to reserve all rights to the consignment until it is delivered, or the consignee receives it but without providing adequate safeguards to the carrier the instructions must not cause more burdens than the contract imposed him.

5. Special Rules on Period of Limitation for Mutual Claims. The period of limitation for claims arising out of or in connection with contracts of carriage shall be one year. When damages were caused deliberately or as a result of gross negligence the general rule (five years’ period of limitation) shall be applied.
1. Engagement-Type Contracts in General

1. The system of engagement-type contracts. The Civil Code Book Six Chapter III Title XVI defines the engagement-type contracts as a separate group type. The classic personal service contract is considered the subtype of the type group, the rules of which should be appropriately applied on a subsidiary basis to the specific separate engagement subtypes. The consignment, the agency, the shipping and the fiduciary asset management contract types are all specific (sub)types based on the principles of the personal service contract.

2. Common features, containment issues of engagement type contracts. The subject of such contracts is any activity benefiting other persons, which is specified in the diligent attendance of the duties undertaken by the agent. The distinction between the engagement-type contracts and the contracts for professional services is a question resulting in quintessential legal effects among the facere-type contracts. The basis of the distinction is the target of the service: contracts for professional services aims to produce a definite result (obligation of result) or a product (creation) achievable with work, while the goal of the engagement-type contract is the diligent fulfillment of the tasks specified by the principal, regardless of the results targeted (obligation of diligence).

2. Personal Service Contract

1. The concept and subject of personal service contract. Under a personal service contract, the agent undertakes to carry out the assignment the principal has entrusted to him, and the principal undertakes to pay the remuneration contracted [Section 6:272 on the Civil Code]. Therefore, the parties agree on the fulfilment of task(s) specified by the principal. The agent to fulfil the service can resort to other’s involvement, unless the nature of the service, statutory provision or the parties to this contract agree on his personal proceedings.

The activities subject of the assignment can be standardized in two directions: so-called non-legal acts (e.g. educational activities) can be distinguished from so-called legal acts (typically making a legal statement, concluding a contract). In the latter case if a contract or another legal statement is required for carrying out the assignment, the contract shall function as a power of attorney as well. [Section 6:274 on the Civil Code]

2. The legal status of the parties. The principal’s right to give instructions. The agent according to the personal service contract proceeds in the interest and benefit of the principal. The agent shall carry out the assignment following the instructions of the principal. The agent may disobey the principal’s instruction if it is essential for the principal’s interest, and the principal cannot be notified in advance. In such a case the principal shall be notified without delay, the failure of which shall trigger a claim for damages from the principal. [Section 6:273 (2) on the Civil Code]

If the principal gives unreasonable or impracticable instructions, the agent shall be obliged to warn him thereof. If the principal insists on his instruction in spite of warning, the agent shall be entitled to withdraw from or to terminate the contract or may carry out the assignment according to the principal’s instructions, at the principal’s risk. The agent shall refuse to comply with such instruction if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others. [Section 6:273 (3) on the Civil Code]

3. Remuneration, costs. The personal service contract in principal is a pecuniary type contract, therefore the agent is entitled to remuneration for carrying out the assignment. The law interprets gratuitous service contracts, where the provisions of personal service contracts shall apply to contracts where the agent
agrees to provide services without any compensation. [Section 6:280 on the Civil Code]

Since the assignment serves the interests of the principal, it is evident that the costs occurring by carrying out the assignment shall be the principal’s liability. The parties can freely agree on the methods of reimbursement, in the absence of it, however, the agent is usually required to advance the costs.

4. Agent's statutory lien. In consequence of the assignment the principal’s properties that come into the possession of the agent have peculiar assurance functions. The agent shall be legally entitled to statutory lien on the property in order to secure his claims for expenses and remuneration. [Section 6:277 on the Civil Code]

5. The termination of the personal service contract. The common rules of termination of a contract are the guiding principles of the termination of the personal service contract. Special rule types are laid down by the law in case of the extraordinary (immediate) termination of the personal service contract, as follows:
   – either party shall be entitled to terminate the contract
   – in the event of termination by the principal, the principal shall pay compensation to the agent for damages resulting from the termination, unless the notice is given on account of the agent’s non-performance
   – if the agent terminates the contract at an unsuitable time, he shall pay compensation to the principal for damages resulting from the termination, unless the notice is given on account of the principal’s non-performance. [Section 6:278 on the Civil Code]

3. Consignment Contract

1. The general traits of consignment contracts. The consignment contract is ruled in the Civil Code among the engagement-type contracts. Its significance is that instead of the actual or later owner of the good, someone else—the consignment agent—conclude the sales. The consignment agent undertakes to conclude a sales contract for a movable property in his own name -not as a representative- and receives commission for his activity. It holds economic importance for security consignments of consignment stores and investment service providers.

2. The concept of consignment contract. Under a consignment contract the consignment agent undertakes to conclude a sales contract for a movable property in his own name, on the principal’s behalf, and the principal undertakes to pay the commission agreed upon.

3. The subject of the consignment contract. The subject of the consignment contract shall be only movable property. Accord to the rules of the Civil Code A consignment contract that requires the consignment agent to acquire ownership of a real estate property shall be null and void. [Section 6:281 (3) on the Civil Code] Although the consignment contract for sales is the most common form of the legal consignment relationship, the Civil Code extend the rules to those legal relations, in which the consignment agent is undertakes other (not sales) contractual obligations.

4. Protection against the consignment agent’s creditors. Important rule on the civil Code protecting the principal’s interests, is that consignment agent's creditors cannot impose demands on the goods, rights or claims acquired and available for the consignment agent based on the established consignment contract.

5. Limit pricing. The nature of the consignment contract is that the economic goal desired to achieve by the principal—e.g. sales or acquisition of a good—depends largely on the expertise negotiating and client obtaining abilities of the consignment agent. Since the principal is not himself involved in negotiating and bargaining, it is in his best interest to limit the budget in which the consignment agent can act. For the creation of the budget serves the so-called limit pricing, so the price which, as a rule, the consignment agent cannot in case of acquisition consignment exceed, or in case of a sales consignment below this price cannot conclude a contract.

6. Legal status of the consignment agent. Given the status of the consignment agent, it can be concluded that the agent is obliged to:
   – conclude a contract in his own name, on the principal’s instructions, with a third person,
   – fulfil obligations that are undertaken against third person in the contract,
the sales contract concluded under a consignment contract shall bind the consignment agent to consign the good bought to the principal,

– the consignment agent shall be responsible to the principal for the performance of all obligations that are undertaken by his contracting partner in the contract (del credere liability).

7. Consignment commission. The consignment agent shall be entitled to commission. This commission is applicable only if the sales contract has been concluded, or if the contract has not been concluded due to reasons within the principal’s control.

8. Right to accession. The commission agent may himself conclude a sales contract with the principal, if the market value of the thing can be clearly determined relying on publicly accessible information. In this case the consignment agent shall claim the original commission, because based on the Civil Code, the consignment agent’s claim for commission shall not be affected if the sales contract with the principal is concluded by the consignment agent himself.

4. Agency Contracts

1. General rules of the agency contracts. The Civil Code with rules regarding the agency contracts responds to those engagement-type contracts, in which the assignee’s (in this case the agent) obligation as a main rule covers not the concluding of a contract on behalf of the principal, but preparation and facilitation of the contract.

2. Obligation to provide information. The Civil Code enforces the agent to notify the principal if he is engaged in providing agency services to a third person, the agent’s infringement of this obligation in itself is a breach of contract.

3. Agents’ fees. The fee shall be payable at the time the mediated contract is concluded, the fee shall be payable to the agent also if the parties conclude the contract after the termination of the agency contract [Section 6:291 (1)-(2) on the Civil Code].

4. Long-term agency contracts. Under an agency contract the agent undertakes to enter into a long-term relationship and to negotiate—acting independently—contracts for the principal to be concluded with third parties, and to conclude such contract in the principal’s name, and the principal undertakes to pay the fee agreed upon [Section 6:293 (1) on the Civil Code].

5. Principal’s obligations. The principal shall, at his own expense, provide assistance and supply information to the agent to the extent necessary to carry out his assignment. According to the special clausula rebus sic stantibus rule the Civil Code disposes, that the principal shall notify the agent without delay if the quantity for which the contract can be or intended to be concluded is significantly less than what the agent has expected.

6. Termination of contract. Either party shall be entitled to terminate a contract for an indefinite period by notice with effect to the last day of the calendar month. The Civil Code regulates differentiated the termination period with regards to the permanency based on the time of the relation between the parties. The termination period is:

– one month during the first year of the contract
– two months during the second year,
– three months during the third and subsequent years of the contract [Section 6:297 (1) on the Civil Code].

7. Indemnification of the agent. As a result of the activity of the agent during the term of the contract, the principal may conclude a contract with new clients after the termination of the legal relationship and thus, in case of termination of the contract, the principal becomes economically more advantageous than the agent. The Civil Code allows—in order to maintain the economic balance of the contract—that the agent to claim, within a one year limitation period after the termination, an amount of indemnification not exceeding one year’s average commission the agent had received during the last five years before the contract was terminated, or if the agency contract had existed for less than five years, the average calculated for one year from the sum received during the life of the contract.
5. Shipping Contracts

1. The concept and subject of consignment contract. Under a shipping contract the forwarding agent undertakes to conclude contracts and to make legal statements relating to shipments in his own name and on the principal’s behalf, and the principal undertakes to pay the fee agreed upon.

Shipping is a double-natured legal transaction. In the aspect of legal their legal relationship, the principal and the forwarding agent establish a commission-type (diligence) obligation, the construction of which is based on consignment. However, the basic content element is the (principal) service agreement intent to establish a legal relationship of enterprise-type of transportation. The mixed nature of the shipping contract is revealed by The Civil Code “Application of the provisions relating to consignment and carriage contracts”, according to which unless otherwise provided for by the Civil Code, the regulations on consignment contracts shall apply to the relationship of the forwarding agent and the principal, and provisions governing contracts of carriage shall also apply to the obligation to provide information relating to the consignment, to the handling, protection and transport of consignments, to the forwarding agent’s lien rights, and to the period of limitation on claims arising out of or in connection with contracts of carriage.

2. The rule types concerning the legal status of the parties. Enforcement of claims against the collaborators. The forwarding agent shall enforce the principal’s claims against the carrier and other contractors hired by the forwarding agent, if so instructed by the principal, at the expense and risk of the principal. The forwarding agent shall be entitled to perform carriage himself instead of contracting third parties. [Section 6:304 on the Civil Code]

3. Specific liability rules of the forwarding agent. The forwarding agent’s liability is mainly the general rule of responsibility of breaching contract. The provisions relating to carrier’s liability shall also apply to the liability of a forwarding agent if: a./ he had the consignment forwarded together with the goods of others, on the same means of transport, and the damage was caused for that reason; b./ the consignment in his possession is lost or damaged. [Section 6:307 on the Civil Code]

4. Specific liability rules of the principal. The principal shall be liable for any damage resulting from the instruction, insufficient packaging and/or labeling of the consignment, or from any discrepancies in the data, documents and information supplied by the principal.

5. Statute of limitations. The period of limitation for claims arising out of or in connection with shipping contracts shall be one year, except for damages caused deliberately or as a result of gross negligence. [Section 6:306 on the Civil Code]

6. Commission. The forwarding agent shall be entitled to any freightage discount granted subsequently and to the referral fees (commission) paid by carriers for the consignments delivered. [Section 6:305 on the Civil Code]

6. Fiduciary Asset Management Contracts

1. General features of fiduciary asset management contracts. The significance of fiduciary asset management contracts. The economic justification of the contract is that there are life situations when for the asset owner it is unprofitable or legally not permitted to maintain the possessor nature, therefore, the property or a part thereof is released to an adequately expert asset manager. The fiduciary asset management contract regarding the purpose is equivalent with the Anglo-Saxon trust legal concept.

2. Concept. Under a fiduciary asset management contract, the fiduciary undertakes to manage the assets, rights and receivables entrusted to him by the principal (herein after referred to as „assets managed”) in his one name and on the beneficiary’s behalf, and the principal undertakes to pay the fee agreed upon. [Section 6:310 on the Civil Code]

3. Subjects of the fiduciary asset management. The right to determine the beneficiary and the conditions for the commencement and termination of beneficiary entitlements lies with the principal. If the contract contains an entitlement for the fiduciary to designate the person of the beneficiary, the fiduciary shall also be entitled to specify the share to be allotted to that beneficiary. Designating the fiduciary as the sole beneficiary shall be null and void.
The beneficiary under the contract may require the fiduciary to release the assets managed and its profits. Creditors of the beneficiary shall be entitled to lay claim to the assets of the beneficiary from the point in time when said assets and their proceeds are to be released to the beneficiary.

Fiduciary can be a natural person and a legal person as well. The principal and the beneficiary shall have the right to check the fiduciary’s activities relating to asset management. The principal and the beneficiary may not give instructions to the fiduciary. The fiduciary shall have the right of disposition over the managed assets according to the conditions and within the limits set out in the contract. The fiduciary shall keep confidential all facts, data and information about which he gained knowledge in the course of or in connection with carrying out his fiduciary responsibilities. At the request of the principal or the beneficiary the fiduciary shall be required to provide information on the managed assets. As a main rule the fiduciary shall bear responsibility for performance of the obligations undertaken towards third persons with the assets entrusted to him. The assets managed shall not be mixed in any way with the fiduciary’s own assets or with other assets he manages, and the fiduciary shall keep separate records of such assets. The fiduciary shall be entitled to charge his remuneration and justified expenses, along with other claims arising out of or in connection with asset management directly from the managed assets.

4. Termination of fiduciary asset management. Fiduciary asset management shall terminate if:
   – there are no assets left to manage,
   – the fiduciary resigns, after three months following the resignation,
   – there is no fiduciary managing the assets for a period of over three months, at the time of termination of the fiduciary mandate,
   – the principal was the sole beneficiary, at the time of his death,
   – for indefinite duration, or longer than 50 years duration fiduciary asset management relation ceases to exist after 50 years.

5. Settlement obligation. If fiduciary asset management is terminated, the fiduciary shall remain subject to the obligation of settlement and to provide information relating to the managed assets as if fiduciary asset management still existed.

6. Allotment of assets managed. The fiduciary, if his mandate is terminated, shall release the managed assets to an additional or a replacement fiduciary appointed by the principal, or, failing this, to the principal.
1. Within licensing contracts, the Civil Code regulates four types of contract, three of them are for consideration, and one of them is gratuitous: lease, residential lease, and leasehold contracts are for consideration, and the lending contract is gratuitous.

2. Licensing contracts establish typically permanent (i.e. long lasting) legal relationships, the object of which is conveying the temporary use of an own or another's thing. This kind of service usually prerequisites the transfer of possession, and in the case of leasehold, there is a surplus element, i.e. the lessee is entitled to utilise the thing, i.e. to exploit it by collecting the proceeds and advantages thereof. As a consequence, there is a phenomenon that the lessee is entitled to the right of removal (ius tollendi) and retaining (ius retentionis), and the statutory lien (sui generis unjust enrichment). In case of licensing contracts, especially in leases, residential leases, and leaseholds, it is a common and usually phenomenon that by performing the main service, the possession of the lessor's asset is transferred into the possession of the lessee. It is also a typical circumstance that the lessee’s own things are taken into the immovable object (be it a house, a flat, an office, or another building or construction) of the licensing contract owned or utilised by the lessor. With respect to the lessee’s things, lessee is entitled to the right of removal, lessor is entitled to the right of retaining and to statutory lien:

- On the one hand, it is then followed by that the lessee is entitled to remove his/her own thing taken into or combined with the rented building at the time of termination of contract.
- Parallel to this, and on the other hand, the lessor of a real estate property shall be entitled to statutory lien on the lessee’s property found within the rental property for the value of unpaid rent and any additional costs. According to this, the lessor is entitled to retain the lessee’s properties for the satisfaction of his/her claims (fee and costs). If the lessee does not perform voluntarily with respect to the retaining, the lessor can satisfy his/her demands by using the lessee's things as pledges.

3. The main service of these contracts is the temporary conveyance of the right to use of a thing. By nature, this service is irreversible. Irreversibility means that in integrum restitution is impossible because of physical (natural) or legal grounds. The giving back or the return of the thing does not shape an in integrum restitution in a legal sense. Irreversibility also has legal consequences with respect to the rules of:

- warranty and other consequences of lack of conformity [Section 6:178 §];
- contracts can be terminated only for the future, there is no right of withdrawal [Section 6:140 § 1];
- since in integrum restitution is impossible, in case of invalidity, the rules of payment for the monetary value for sui generis unjust enrichment shall apply (see Section 6:113 § 1).

4. The Right of Removal (ius tollendi) and Retaining (ius retentionis), and the Statutory Lien. In case of licensing contracts, especially in leases, residential leases, and leaseholds, it is a common and usually phenomenon that by performing the main service, the possession of the lessor's asset is transferred into the possession of the lessee. It is also a typical circumstance that the lessee’s own things are taken into the immovable object (be it a house, a flat, an office, or another building or construction) of the licensing contract owned or utilised by the lessor. With respect to the lessee’s things, lessee is entitled to the right of removal, lessor is entitled to the right of retaining and to statutory lien:

- On the one hand, it is then followed by that the lessee is entitled to remove his/her own thing taken into or combined with the rented building at the time of termination of contract.
- Parallel to this, and on the other hand, the lessor of a real estate property shall be entitled to statutory lien on the lessee’s property found within the rental property for the value of unpaid rent and any additional costs. According to this, the lessor is entitled to retain the lessee’s properties for the satisfaction of his/her claims (fee and costs). If the lessee does not perform voluntarily with respect to the retaining, the lessor can satisfy his/her demands by using the lessee’s things as pledges.

5. Another basic element is that these agreements necessitate a relationship of trust and confidence with a specific individual since the object thereof is transferring temporarily an own thing for another. As consequence emerges that the lessee is entitled to sub-lease or assign the use of the leased thing to third parties subject to the lessor’s permission and with a strict liability.

6. The indirect object of licensing contracts, i.e. conveying the temporary conveyance of the use of a thing (or the exercise of a right) is always an individual and sometimes a unique service. It follows that:

- the lessor, if the rented object was unintentionally perished, is not obliged to give a new one,
- and the devastation of the thing makes the contract terminated.

7. With respect to the fact that licensing contracts usually are long-lasting relationships, it is an important phenomenon that the value of the rented object may significantly change. This changing can be:

- either a decrease or an increase;
- either considerable or unremarkable;
- the changing of value can be caused:
• by facts belonging to the lessor's sphere,
• by facts belonging to the lessee's sphere,
• by facts belonging to both party's sphere,
• by facts belonging to a third person's sphere,
• by natural events.

– the parties' conduct causing the changing in the value of the rented thing:
  • may correspond to the Principle of Expectability or may not meet it;
  • may be a breach of contract, or on the contrary;
  • may be lawful or otherwise unlawful.

If the value of the rented thing has changed, parties fall into a legal relationship for settlement. The following issues do not belong to the objects of settlement:

– the costs emerging by the performance of obligation of value saving investments, and
– the natural depreciation of the thing caused by conform use.

According to this, the following items do belong to the scope of settlement:

– the costs of non-compulsory, value adding investments,
– itself the increase of the value,
– the decrease of value caused by the non-conform use of the thing.

8. The validity of lease contracts of things and gratuitous lending contracts has no formality requirements: these contracts may be concluded either orally or in writing or by conduct. Written form is indispensable for the validity of residential leases and leaseholds, moreover, an authentic instrument or a private document representing conclusive evidence is necessitated for the validity of leaseholds of arable lands.

9. In case of every licensing contracts, the Civil Code gives the right of unilateral termination of the contract for the future, i.e. with an ex nunc effect. This right of unilateral termination ex nunc is twofold:

– it can be, on the one hand, a freedom of the parties, this is called termination by notice, in the case of fixed-term contracts, such freedom of termination is very limited, but in case of contracts of indeterminate duration, freedom of termination by notice is almost unlimited;
– in can be, on the other hand, a private law sanction based on a substantial breach of contract, this is called immediate termination (termination without notice), which is irrespective of the contract's duration.

Termination is an assigned legal statement, which becomes effective according to the rules in Sections 6:5 § 1–4 (e.g. a distance legal statement becomes effective when delivered to the addressee). An effective termination statement ceases the contractual relationship without the consent of the addressee since it is based on a right of making a unilateral statement for the termination with ex nunc effect [Section 6:213 § 1].

2. Lease Contracts

1. The content of the legal relationship (i.e. the rights and obligations of the parties) can be summarised as follows. At first place, the lessee is entitled to:

– use the thing for its intended purpose and in accordance with the contract;
– sub-lease or assign the use of the leased thing to third parties subject to the lessor’s permission:
  • if with permission, the lessee is liable for the conduct of the sub-lessee and the user as for his own conduct;
  • if without permission, the lessee is liable for damages that would not otherwise have occurred.
– free terminate the contract if the leased thing is designed for human habitation, and it is in a condition representing a potential risk to health; the lessee may terminate even if he/she had or ought to have knowledge about this fact at the time of the contract’s conclusion;
– remove (ius tollendi) his/her separable investments that has been added to the thing at his own expense without causing any damage to the thing;
– protest against the extent of the lessor's statutory lien; in this case, the lessor shall enforce his lien by court action within 8 days, and, by failing this term, the lien ceases;
– retain (ius retentionis) the thing without using it until his/her claims against the lessor arising from the lease are settled.
2. The lessee is obliged to:
   - pay the lease charge:
     * monthly, in advance;
     * the charge usually is money, but it can be any valuable service as well;
     * its measure is regularly subject to the parties' agreement;
     * if market conditions significantly change, and it harms the principle of proportionality between the values of charge and use, parties are entitled to request to amend the contract, and, if it is unsuccessful, the contract can be contested;
     * if lease charges' or other costs' payment failed, the lessor first issues a written demand for remittance of overdue payments within a reasonable period of time and notifies the lessee of the consequence of termination, and if the lessee again fails to remit payment within this period, the lessee is entitled to immediate termination; without termination, the lessee may further use;
   - accept the rented thing;
   - to pay a use fee for the use without title if continues to use the thing after the termination of the contract;
   - in integrum restitution if altering the rented thing without legal entitlement;
   - bear the minor expenses required for the rented thing's maintenance; if fails to do so, the right of termination is granted for the lessor (see above);
   - prevent and mitigate damages, within which is obliged to notify the lessor in the event of imminent danger to which the thing is exposed or if any work for which the lessor is responsible is required; furthermore, is obliged to permit to carry out these works;
   - permit any potential buyers of the rented thing to inspect it without causing any unnecessary disturbance to the lessee and, prior to the termination of the lease, to permit any potential future lessees to inspect it at an appropriate time and in an appropriate manner;
   - return, leave, and vacate the thing to the lessor at the time of termination of the lease.
3. The lessor is entitled to:
   - the lease charges;
   - inspect the use without causing any unnecessary disturbance to the lessee;
   - terminate the contract of lease if:
     * the lessee fails to stop inappropriate or non-contractual use of the thing despite being asked;
     * the measure of unlawfulness of this kind of misuse is significant, termination can be exercised immediately without any call;
     * the lessee caused a serious harm in the thing, which endangers even the appropriate use.
   - carry out the work for which he/she is responsible and prevent damages;
   - the lessor of a real estate property shall be entitled to statutory lien on the lessee's property found within the rental property for the value of unpaid charges and costs; so long as this lien exists, the lessor is entitled to block the removal of hypothecated assets; lessor enjoys a priority in the ranking of the liens on the thing.
4. The lessor is obliged to:
   - convey the temporal use of his/her own thing or another's thing;
   - warranty: the lessee shall guarantee that the thing leased is and will be suitable for use as contracted for the entire duration of the lease, and that it is otherwise in conformity with the provisions of the contract; the lessee is entitled to terminate the contract instead of withdrawing it, and is not entitled to demand replacement;
   - warranty of title: the lessor shall guarantee that no third person has any right to the leased thing that can prevent or restrain the use of the thing; lessee is entitled to terminate the contract instead of withdrawing it;
   - bear every other expense and the public duties in connection with the thing.
5. Cease of fixed-term lease:
   - lease ceases after the expiry of the fixed term of lease; however, if the lessee continues to use the thing after the expiry of the lease term, and the lessor does not protest against it within 15 days, the lease transforms into a lease for an indefinite period of time;
   - lease terminates by the devastation of the thing leased, the cause of which is irrelevant;
   - preferential termination: fixed-term leases can also be terminated in specific cases as follows:
• the heirs of the lessee are entitled to terminate fixed-term lease by giving notice within 30 days;
• the new owner of the leased thing is entitled to terminate the fixed-term lease if he/she was misled by the lessee regarding the existence or important conditions of the lease;
• otherwise, fixed-term lease contracts cannot be terminated (cf. immediate termination).

6. Cease of lease of indeterminate duration:
  – by the devastation of the thing, the cause of which is irrelevant;
  – either party is entitled to terminate such lease contracts according to the followings (this is called ordinary termination otherwise termination by notice):
    • any time in the case of daily lease from one day to another;
    • in weekly lease, on the first day of the week to take effect at the end of that week;
    • in monthly lease, at the latest by the 15th day of the month to take effect at the end of that month;
    • in the case of longer lease terms, at the latest by the thirtieth day preceding the end of the lease term.

7. Basic specific rules of residential lease contracts:
  – security deposit: by agreement, the tenant is obliged to give a security deposit to the landlord to assure performance of his/her obligations, this sum cannot exceed the monthly rent three times over;
  – compensation for the right of removal: the tenant may not exercise his/her right of removal if the landlord offers appropriate compensation for the right of removal, and this does not harm the tenant’s relevant lawful interests;
  – special warranty right of termination: the landlord shall notify the tenant in writing of the planned works and of the expected duration thereof in due time before the beginning of works; the tenant has the right to terminate the lease before the last day of the month following the time of receipt of the notice;
  – termination by notice: either party is entitled to terminate the lease of indeterminate duration at the latest by the 15th day of the month to take effect at the end of the next month;
  – the reason for an immediate termination (without notice): if the tenant is engaged in any flagrant misconduct against the neighbours in contrary to the requirements of co-existence;
  – special obligations of the landlord based on the Act LXXVIII of 1993 upon residential leases:
    • conveying the flat or house together with the apartment furnishing appropriate to comfort level;
    • maintaining the building together with its equipment;
  – special rights of the tenant according to the Residential Leases Act (see above):
    • use the common places of the building with no harm of other tenants’ interests;
    • swap the lease right in the house with the permission of the landlord;
  – peculiar causes of cease:
    • the tenant swaps the object of residential lease;
    • the tenant was expelled from Hungary;
    • the lease was terminated by court or by authority decision.

3. Leasehold Contracts

1. Leasehold contract is a special type of lease contract. Whilst lease contract are for grounding the lessee’s entitlement of using a thing or exercising a right, leasehold contracts establish, beyond these, the right to utilise or exploit a thing or a right as well. This major difference in the contents of the service characterise the diversity in the regulation, too. However, unless otherwise provided for, the regulations governing lease contract shall apply to leasehold contracts mutatis mutandis; rules of lease shall apply mainly with respect to the following questions:
  – concerning every kind of leaseholds: bearing the costs and public dues; statutory lien; the devastation of the object of leasehold; parties’ rights and obligations by termination of contract;
  – concerning every kind of leaseholds except agricultural leaseholds: paying the rent; termination of leasehold; returning the thing leased; termination by notice.

2. The system of regulation in relation to agricultural leasehold and leasehold of arable lands can be summarised as follows:
129

- The major part of rules are mandatory:
  - the advantages of partial invalidity based on the Civil Code cannot apply, therefore, the whole contract becomes invalid, and in toto collapses as void and null, if only a part of it is invalid;
  - Public Prosecutors also have the right to bring an action for declaring the contract’s invalidity.
- Special laws to apply in this field of law are as follows:
  - Act CXXII of 2013 on Transactions in Agricultural and Forestry Land (abbrev. in Hung. as Fft.);
  - Act CCXII of 2013 on the Transitional Provisions in Relation to the Fft. (Hung. abbrev.: Ffté);
  - Act CXXIX of 2007 on the Protection of Arable Lands (Hung. abbrev.: Tvt);
  - Act CXCVI of 2011 on National Wealth (Hung. abbrev. Nvet);
  - Act LXXXVII of 2010 on the National Land Fund (Hung. abbrev.: Nfat);
  - Act XXXVII of 2009 on the Conservation and Management of Forests (Hung. abbrev.: Evt);
  - Act XLIX of 1994 on the Associations of Forest Holders (Hung. abbrev. Ekt);

3. The contents of leasehold contracts:
- Under a leasehold contract, the lessee is entitled to temporarily use or exercise an economically viable thing or such right, and to utilise these by collecting the proceeds thereof; and, in return, is obliged to pay an appropriate rent.
- The duration of the contracts shall be examined by sectors:
  - leasehold contracts shall be concluded for a fixed term of not less than one financial year and not more than 20 years (see Fft. Section 44 § 1);
  - leasehold contracts may be concluded for forest land and land designated for afforestation for a maximum duration of 10 years following the end of the growing period (maturity for felling) (Fft. Section 44 § 2 and cf. also Evt. Section 20);
  - in case of a leasehold of a right to hunt, the duration is based on the wildlife management agenda of the hunting ground (Ntv. Section 17 § 3);
  - in case of a leasehold of a right to fishery, the duration is at least 5 years but not exceeding 15 years.
- The rent usually is money but is also can be performed totally or partially in kind:
  - In the so-called share cropping, rent is in kind by defining it as a certain percentage—usually 50%—of the actual produce of the land leased (see Ffté. Section 66);
  - In the so-called share farming (cf. Ffté. Section 67), parties make a consent about what and how to produce on the land leased, how to share proceeds and risks, how to bear the risks of perish by vis maior, and how they share the use of agricultural equipment.
- The gratuitous forms thereof: irregular lending and gratuitous land-use for the favour of another.
- The right to utilise (exploit) is the essential element of the leasehold contract:
  - Exploitation is the acquisition of ownership of those produces, progenies, proceedings, and other advantages reached during a prudent management of the thing leased, which were not excluded from the acquisition by the parties’ agreement.
  - The lessee has the right to acquire the ownership of these advantages by separation thereof; if the lessee does not possess the thing from which the advantages originate, shall become owner by taking possession thereof (cf. Section 5:50. §).
- Prudent management and cultivation of the land according to its designated purpose: These are the major obligations of the lessee, the actual content of which are defined by sectoral legislation, and the breach of which result a substantial breach of the contract opening the lessor’s right of immediate termination [Section 6:354 § 2]. The lessee of an arable land shall cultivate the land according to its designated purpose and shall preserve the fertility of the land in the course of doing so.
- Sub-leasehold of land is void with one sole exception regulated by Ffté. Section 64.
- The objects of leasehold are economically viable immovables, economically viable and non-consumable movables, and economically viable, transferable, marketable rights (e.g. hunt, fishery, spectrum-use and land-use rights), as well as future things and rights (which come into being subsequent to the conclusion
of the lease contract thereof).

- The rent, i.e. leasehold payments are made subsequent to the period to which it pertains. For years, in which the crop yield remains below two-thirds of the average due to natural disaster or some other extraordinary event, the lessee is entitled to request a reduction or consolidation of lease payments. The lessee must notify the lessor of such request prior to having the crop in question harvested. Reduced or cancelled lease payments may not be demanded subsequently.

- In the position of the lessor may stand a person, who is entitled to disposition for the thing leased: such person is e.g. the owner or usufructuary of the thing.

- In the position of the lessee may stand either a natural or a legal person, however, with numerous restrictions by law:
  - farmers and agricultural producer organizations subject to the Ft. Section 40;
  - association of forest holders, public education institution of the agricultural sector, institution of higher education of the agricultural sector, listed churches etc. (Ft. Section 40);

- The right of first refusal for tenancy: If the owner (here: lessor) enters into a contract in breach of this right, such contract shall be relatively ineffective with respect to the holder of the right (here: lessee). The lessee may enforce the claim arising from the infringement of this right within 30 days after getting knowledge of such contract, but to a maximum of 3 years after concluding such contract (this is the general law in Civil Code Section 6:223 with some sectoral exceptions);

- Bearing costs and public dues: the lessee bears all applicable public dues on the thing as well as the costs of renovation and repairs being necessary for the thing's maintenance, whereas the costs of extraordinary renovations and repairs are borne by the lessor.

- Statutory lien: the lessor is entitled to statutory lien on the proceeds of the thing and/or on the lessee's property found in the leasehold area up to the extent of lease payments.

- Termination: every type of termination is valid in writings since being in writing, as a form, is the validity requirement either of the leasehold contract (Section 6:6).
  - Termination by notice: agricultural leasehold contracts concluded for an indefinite duration can be terminated by the end of the fiscal year by giving six months' notice. To the notice period of leasehold contracts for other things or rights, the provisions on the termination of lease shall apply.
  - Immediate termination: the lessor is entitled to immediate termination if the lessee:
    - fails to cultivate the leased land despite of being asked to do so, or
    - is engaged in conduct that seriously jeopardizes the overall success of production, the fertility of the land, the livestock, or equipment;
    - despite of being asked in writings to do so, fails to perform the obligation of exploitation;
    - without the lessor's permission, made sub-leasehold, changed the goal of exploitation or made a land conversion.
  - Preferential immediate termination: if the lessee's health deteriorates to such a degree, or if permanent changes occur in the living conditions, which impede the ability to perform the obligations arising from the leasehold.
  - Obligation of return: If an agricultural leasehold is terminated, the arable land and other leased things shall be returned in a condition that allows immediate and proper continuance of production.

4. Gratuitoius Lending Contract

1. Under a lending contract the lender undertakes to make available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, a specific thing, and the borrower shall accept the thing.
2. The lender is entitled to refuse performance of the contract if:
   - proves that the performance can no longer be expected due to a significant change, which happened subsequent to the conclusion of the contact, in the circumstances either of the parties or in their relationship;
   - or such circumstances emerged after the conclusion of the contract, on the ground of which termination could be applied.
3. Rights and obligations of the borrower.
– The borrower is entitled to use the thing properly and in accordance with the contract.
– The borrower bears (liable to cover) the costs of the thing’s maintenance and is entitled to compensation for other related expenses in accordance with the regulations on negotiorum gestio.
– The borrower is entitled to offer to return the thing at any time.
– The borrower is entitled to make available the thing for use to a third person with the lender’s permission; if he/she did so
  – with permission, the borrower is liable for the conduct of the user as if it were his own;
  – without permission, the borrower is liable for damages that otherwise would not have occurred.

4. Rights and obligations of the lender:
– The ownership of the thing’s interim proceeds is acquired by the lender (by separation).
– Termination by notice. Both parties are entitled to terminate the contract of indeterminate duration by giving 15 days’ notice.
– If the borrower offers to return the thing, the lender shall not be entitled to refuse to take it back at any time without good cause.
– Immediate termination is the right of the lender, if:
  – the specified aim of the lending has become impossible;
  – the borrower damages the thing, uses it in a way contrary to its purpose or the contract,
  – the borrower makes the thing available to a third person without permission,
  – there is a risk that the borrower will not return the thing in its original state;
  – the parties’ relationship has become worse due to the conduct of the borrower,
  – the lender inevitably necessitates the thing for reasons unforeseen at the time of the contract’s conclusion.

5. A lending contract is terminated when the thing is returned or by the death of the borrower.
1. General Provisions of the Deposit Contracts

1. Deposit contract. Under a deposit contract the depository shall safeguard personally that the contract pertains, and to return it when the contract is terminated, while the depositor’s obligation is to pay the fee. Guarding immovable property—as it is not at risk of loss—may only be subject to supervision against depreciation, which falls under the terms of the personal service contract.

2. Use of the deposited thing, entrusting it to others, collecting its proceeds, and handling. The depository shall safeguard and to keep record of the deposited thing separate from his own and from other deposited things. The depository shall treat the deposited thing if it comes from the nature of the deposited thing. The regulations relating to personal service contracts shall also apply to the treatment of deposited things. The depository cannot use or make use of the deposited thing and cannot give it to another person or for safekeeping, unless this is necessary in order to protect the depositor from suffering any losses. In case of infringement of this provision the depository is liable for all damages that otherwise would not have occurred. The depository shall collect the proceeds of the deposited thing if, by its nature, it has any. The depository shall give account to the depositor regarding the collected proceeds. The depository can use the proceeds to cover his expenses but shall give the rest to the depositor.

3. Refusal to receive the thing. The depository has the right to refuse to receive a thing if conditions occur under which he could terminate the contract in the case of a fixed-term contract.

4. Statutory lien. The depository is entitled to a statutory lien on the depositor’s property that is in his possession in part of the deposit as a security of his claims for fees and expenses.

5. Termination of the deposit. The depositor can abrogate the contract whenever he wants to. If the parties agree in the contract, that the depository shall release the thing to third parties in case of conditions stipulated in the contract or in case of termination of the contract, the depositor can only terminate the contract, if the third party agrees to the termination. If the duration of the contract is indeterminate, the depository can terminate it by giving fifteen days’ notice. If the duration of the contract is fixed, the depository can only terminate it, if the thing is at risk, or if he safeguards the thing not as part of his profession and circumstances emerge, of which he was unaware at the time he signed the contract, to make further safeguarding of the thing considerably difficult. If the contract is terminated before the fixed duration of the deposit, the depositor shall pay a commensurate proportion of the fee. The depository shall return the thing at the place where it was safeguarded by him. If the depositor refuses to pick up the thing, the regulations on negotiorum gestio shall be applied.

6. Voluntary deposit. The provisions of the chapter of the Cc. regarding the general provisions relating to deposit contracts shall be applied accordingly to deposit contracts where the depositor does not shall provide any compensation. The depository can demand the payment from the depositor for necessary expenses. The depository is liable according to the principles of non-contractual liability for loss incurred by the depositor resulting from the loss, destruction or damage to the thing.

2. The Collective and the Exceptional Deposit Contract

1. Collective deposit contract. If the object of the deposit contract is a replaceable property and if the depository is entitled to safeguard the replaceable property of different depositors together in the same place, without having to separate them by depositors or to identify them individually, the depositors become co-owners of the replaceable properties of the same type and quality and, when the deposit is terminated, the depository shall return property of the same type and quality as the property deposited in the proportion due to the depositor in accordance with his share of ownership. The depository does
not need the consent of the other co-owners to release an amount in proportion to the share of ownership. In case of a collective deposit, the depositary does not need the consent of the depositor to place the securities under the care of investment service providers or clearing houses authorized to provide safe custody services.

2. **Exceptional deposit contract.** If the object deposited is a replaceable property and the depositary has the right to use and to dispose over the object, the depositary acquires ownership of it and is liable to return to the depositor the object of the same type and quality, in the same quantity at the time the deposit contract is terminated. Under the rule above, there are two conditions of the establishment of an exceptional deposit: the subject of the deposit is money or other replaceable things (securities, grain, etc.), and the parties must be implicitly or explicitly agree that the ownership of the deposited thing passes to the depositary, and he is not required to return the same thing, but to return the thing in the same type and quality, in the same quantity (e.g., wheat of the same quality, the same series of securities).

3. **Account-keeping obligation in case of collective and exceptional deposit contract.** If the depositary shall open a deposit account on the depositor’s behalf for securities held under collective and exceptional deposit contracts, the regulations on the transfer or charging of dematerialized securities shall be applied to the transfer of these securities.

3. The Hotel Deposit Contract

1. **Hotel deposit contract.** The liability of the hotel covers things put by the guest in a place in the hotel that is designated or usually used for this purpose, or in his room, and to things of guests handed over to an employee of the hotel who seemed to be entitled to receive his things. The liability of the hotel is maximum fifty times the price of the hotel room for one day. Any additional limitation to or exclusion of liability is null and void. The hotel is only liable for securities, cash and other valuables, if the hotel has received the thing for safekeeping or if the hotel has refused to receive the thing for safekeeping. The hotel’s liability for these things is unlimited.

2. **The hotel’s lien.** The rules about the lessors’ lien shall be applied to the hotel’s lien as a depositary.

3. **Liability of institutions open to the public.** The rules about the liability of hotels shall be applied to the liability of baths, cafes, restaurants, theatres, and other similar institutions that are open to the public, and slop-rooms, with the following exceptions:
   - their liability shall be applied only to the things that are usually taken to these institutions by the visitors;
   - if there is a suitable place provided for visitors for the safekeeping of their property, the institution is liable only for damages to things deposited in that place.
1. In the title of credit and account agreements, the Civil Code collected those contractual relationships, which are the prevalent types and forms of financial operations and banking. The principles of the regulation of the nominated contracts of these contractual relationships are as follows:

- nominate contracts’ regulation is a framework legislation;
- merely the most common and quotidian types of contracts appear in the Code;
- the regulation of some contracts of the Civil Code of 1959 under the same nomination has been meaningfully modified (see e.g. loan);
- complex types of contracts regulated by the Code of 1959 were split to more than one new nominate types concerning the major functions of the agreements (see e.g. the former “bank account contract” which was divided to payment account contract and payment service contract);
- some contracts previously regulated by special laws or international standards (such e.g. as financial leasing or factoring) were incorporated into the Code among other nominate contracts;
- the new Civil Code left out some former types of contracts such as the savings deposit contract, since the regulation of deposit account contracts can reasonably substitute its role, because these do not exclude the possibility of issuing (savings) account passbooks; so far as money laundry is concerned some former types were hazardous financial instruments (e.g. the unnamed deposits for unrestricted bearers); the special law regulating these contracts is the Law-Decree No. 2 of 1989 on Savings Deposits (abbrev. In Hung. as Tbt.), according to which all savings deposit accounts must be registered under the holder’s name (cf. Tbt. Section 1 § 2 and Section 18);
- during the codification process, there was an effort to codify the documentary credit as well as the derivatives; the opinions were, however, not unanimous, since international conventions upon the former offer a good legal background thereto, and the regulation of the latter would have broken the framework of the Civil Code.

2. a) Concerning the legal position of the subjects, credit and account agreements can be classified as follows:

- in some of them, any natural person may stand in both contractual positions (e.g. loan);
- in others, on the one side of the contract may stand only a special legal person such e.g. as a financial or a credit institution (e.g. account contracts);
- in others again, according to economic practice but not with respect to a restriction by law, usually economic operators stay in the both sides of the contract (e.g. financial leasing);
- at last, there is also professional contracts, on the both sides of which can stand merely financial institutions, i.e. credit institutions or banks (e.g. factoring).

b) The new law on Credit Institutions and Financial Enterprises (viz. Act CCXXXVII of 2013; Hung. abbrev.: Hpt.) define the notion and the form of operation of financial institutions with respect to their legally appointed market activity of financial services regulated by Section 3 § 1; which of these services can be provided by the actual institution or which can be provided exclusively by such a legal person.

According to the Hpt., the legal notion of the widest extent is the financial institution. Credit institutions and financial enterprises are recognized as financial institutions (Hpt. Section 7 § 1). Credit institution means a financial institution, whose business inter alia includes to take deposits or other repayable funds from the public, and to grant credits and loans (Hpt. Section 8 § 1). Credit institutions may be banks or specialized credit institutions, or credit cooperatives; the latter one may operate in the form of a bank, specialized credit institution, savings and loan, or credit union (Hpt. Section 8 § 3).

c) The Civil Code nominates the subjects of the contracts as follows:
3. a) The notion of 'credit' in the widest sense is one of the core issues of private law. The broader notion of credit means every legal relationship, in which the performance of service and consideration are separated in time. The provisions upon loan agreements shall apply mutatis mutandis in these cases (Section 6:389).

This broader notion of credit is ubiquitous and quotidian in every segment of the modern market economy since it is not concentrated only to money lending because it helps market operators to execute and realise their commercial transactions.

Almost every kind of contracts can be concluded in a way similarly as credit by separating the settlement timing of service and consideration. It is common within such contracts, that the cause of temporary separation of services is not a breach of contract (e.g. a delay) or an early settlement, but it is based on the parties' consent.

As said, according to Section 6:389, provisions upon loan agreements shall apply in every contractual relationship (sales, licensing etc.), where performance of service and consideration are separated in time, namely:

- if the service provided by one of the parties precedes the money to be provided by the other party, or
- if payment of the consideration precedes performance of the main service.

b) Account contracts can be interpreted as a credit as well as a settlement relationship: the proportion of these characters depend on the parties' will and consent or on the duration of contract. In the case of a settlement period of longer duration, during which the money debts of solely one party is introduced into the account (see e.g. the relationships between universal service providers and customers thereof), it is obvious that crediting and financing function of the contract is more significant than a mere accounting service.

2. Framework Rules of the Contracts Nominated

2.1. Fundamentals of Credit and Loan Contracts

1. This chapter summarises the basic issues of the so-called credit operation contracts. The definitions of the Civil Code clearly show that there are significant differences between future loan contracts and credit contracts. A credit agreement is, namely, much more than a simple deferred loan agreement, since:

- under a credit agreement, the creditor undertakes to ensure the availability of a specific credit limit,
- and to conduct credit operations up to the credit limit, i.e. to conclude:
  - a loan agreement,
  - a contract of suretyship or a guarantee contract for grounding security for the debtor's other creditors.

In case of a simple loan, the creditor is obliged:

- to make available a specific sum of money, whilst the debtor is not obliged to draw funds from the loan, just as in the case of the credit contracts;
- to pay when drawn a specific amount of money, not to conclude a loan agreement for this purpose, like it is in the case of credit agreements.

2. The regulation of the Civil Code offers only a legal framework, which is concentrated around the following three issues: the conclusion of credit operation contracts; ensuring the availability of the credit limit, and the termination of contract. Basic regulations are common in the cases of credit and loan agreements as follows:

- the debtor is obliged neither to conclude credit operation contracts nor to draw the funds from the loan;
- for ensuring the availability of money, the creditor is entitled to a fee.

3. Credit relationships are legal relationships, in which parties intend to conclude nominate credit operations such as loan, surety, and guarantee, or factoring, and, beyond these, to conduct other credit operations such as
discounting of bills or issuing letters of credit. Credit relationships are twofold such as:

- in the one group, creditor and debtor conclude a novel credit operation contract (loan or factoring) with each other;
- in the other group, the creditor concludes a credit operation contract with a third person (surety or guarantee).

4. The main service of a credit agreement is to ensure the availability of a specific credit limit, which is an autonomous service of praestare and non-facere. Its economic essence is to provide financial security for the debtor. A credit agreement can fully play its role, even if it is limited to the mere ensuring of the credit limit’s availability, i.e. without drawing the loan.

5. The availability of the credit limit is ensured for consideration which is a complex sum of money called credit fee or premium rate. This complex counter service may imply many issues such as interests, fees (e.g. valuation fee, audit or inspection fee, or guarantee premium), and commissions (e.g. for ensuring availability), as well as many costs (such as e.g. amount of the administration or servicing costs). The so-called Annual Percentage Rate of Charge (abbreviated in Hungarian as “THM”) is a common indicator used by every credit market operator mandatorily in the same way. It exactly shows the total amount, and the debtor is obliged to pay back beyond the capital for one year of period. It was introduced in Hungary for the protection of deposit holders in 1997.

6. According to the speciality of the termination of credit agreements, it does not entail the termination of credit operation contracts (loan, surety, guarantee etc.) based on the credit agreement (Section 6:382 § 6). Termination is an assigned legal statement i.e. a unilateral act intended to have the legal effect of termination, which becomes effective, if made between persons who are present, immediately, but, if between persons in a distant place, when delivered to the addressee, if made by implicit conduct, when communicated to the addressee (Section 6:5 §§ 1–3). This kind of termination is, therefore, immediate, which terminates credit contract from the time of its exercise for the future (ex nunc).

Limits of the right of termination:

- the termination is valid if its reason is properly indicated if that right exists for many reasons (Section 6:140 § 2);
- the creditor shall first notify the debtor for providing an adequate guarantee.

The following reasons for termination are common in the case of every credit operation contract:
- The creditor is entitled to terminate the contract if:
  - any disadvantageous material changer took place in the debtor’s circumstances, and the debtor fails to provide adequate guarantees in spite of being requested to do so; the creditor is entitled to terminate without requesting such guarantees, if it is evident that the debtor is unable to do so (e.g. from the facts of the business or company register that the debtor is under the scope of bankruptcy or liquidation or judicial enforcement process, or that the the seat or registered office is regularly transferred;
  - the debtor misled the creditor, and this had an impact on the conclusion of the contract and its contents;
  - the debtor’s fraudulent conduct jeopardizes the performance of either credit operation contracts.
- The debtor is entitled to terminate the contract at any time.

7. a) Under a loan contract the creditor undertakes to make available a specific sum of money, or some other fungible property, and the debtor undertakes to repay that sum to the creditor at a later date with interest, or to return to the creditor property of the same type and quality, in the same quantity at a later date defined in the agreement.

b) Making available a specific amount of money means that the payment of money is executed by way of
- transferring ownership of money to the creditor, or
- deposit to the creditor’s payment account, or
- credit transfer to the creditor’s payment account (Section 6:42).

c) The interest rate shall be the same as the central bank base rate; if the monetary debt is to be repaid in a foreign currency, the interest rate shall be the same as the base rate of the issuing central bank or failing this the money market rate (Section 6:47. §).

According to interest freedom, parties may freely define the measure of interest even by derogating the Civil Code rules, however, this freedom has four specific limits:
- gross disparity in the values of services (laesio enormis) leads to the avoidance of the contract;
- usury makes the contract term null and void;
at the obligor’s request, an excessive interest may be reduced by court [Section 6:132].

d) The Civil Code has modified the previous regulations on early settlement. According to this, the creditor shall accept performance offered before the delivery date, if:

- that does not harm relevant lawful interests,
- and the debtor covers the extra costs caused by the early settlement [Section 6:36 § 1].

However, in the case of early settlement of a monetary debt, the creditor shall accept early settlement of the debt before the due date [Section 6:43]. This law is based upon the assumption that the consideration is money payment. In case of loan agreements, money payment is not a consideration but the service. Parties can avoid this conflict of interests that they derogate by their consent these non-mandatory regulations.

In contracts that involve a consumer and a business, any term excluding the early settlement of a monetary debt, and any term imposing extra charges on the consumer apart from the costs directly related to early settlement, shall be null and void [Section 6:131]. Law acknowledges only direct costs as actual loss (damnum emergens), therefore, the law does not make possible to have claim for the lost gains (lucrum cessans) or the lost interest.

e) Drawing the funds from the loan is a right of the debtor but not an obligation, therefore, the failure of it is not a breach of contract, thus, if the debtor fails to draw the funds from the loan, the debtor:

- shall reimburse the creditor for expenses incurred in connection with the contract’s conclusion [Section 6:385];
- shall pay a fee to the creditor on the loan amount kept available [Section 6:386].

f) The creditor is entitled to refuse liquidating the loan, if, due to any material changes in the debtor’s circumstances or in the value or enforceability of the collateral, performance of the contract can no longer be expected, and the debtor fails to provide adequate guarantee in spite of being requested to do so.

In this case, the contract remains, thus, if the basis of the right of refusal ceased, the debtor can become entitled again to get the loan disbursed.

The Civil Code erased the parallel right of the creditor to refuse loan disbursement on the grounds of any meaningful changes in the creditor’s own circumstances.

g) Special grounds for termination by the creditor in the case of loan contracts:

- the use of the loan for the purpose specified in the agreement becomes impossible,
- the debtor uses the loan for a purpose other than the one defined by the agreement;
- the debtor impedes the investigation of solvency, or of adequacy of collateral or that of the security, or the realisation of the purpose of the loan;
- the collateral provided for the loan has significantly depreciated in value or in enforceability, and the debtor has not supplemented it at the request of the creditor; or
- the debtor delays the payment and fails to remedy when requested.

2.2. Deposit Account Contracts

1. Deposit account contract is the one of the many bases of banking systems. The major functions of banking are, on the one side of the balance, to collect deposits, and, on the other side of the balance, to relocate the collected deposits as credits by money lending such as credit and loan agreements. One of the main financial resource of money lending is based on the value of deposits. So far as the contract’s content is concerned, deposit account is related to two another nominated contracts such as loan agreement and irregular (or exceptional) deposit.

2. Under a deposit account contract, the deposit holder is entitled:

- to deposit a specific amount of money to the bank,
- to request repayment of the funds held on the account before the expiry of the term specified in contract:
  - by the lack of the deposit holder’s request, the bank is not entitled to repay the funds held on the account before the expiry of the term,
  - the funds not collected upon maturity are converted into a deposit of indeterminate duration.

3. Under a deposit account contract, the bank undertakes:

- to accept the sum of money offered by the deposit holder,
- to repay the same amount at a later date,
- together with interests.

- In the case of fixed-term contracts, the bank is obliged to repay the funds held on the account upon
maturity or as instructed by deposit holder.

- In case of deposits for an unfixed term the bank is required to promptly repay the funds held on the account as instructed by deposit holder.

2.3. Current Account Contracts

1. Under a current account contract the parties assume an obligation to record and settle their enforceable monetary claims arising from a specific relationship in a consolidated account (Section 6:391).

Current account relationships are autonomous legal relationships, however, in its background, there stands an also independent financial-economic relationship which is executed within the frameworks of another contractual relationship (this is the so-called basic contract) as well. Current account claims are subject to the contents of the basic contract, therefore, these elements govern the extent of current account claims but not contents of the current account contract.

2. Establishing the balance of current account is the central issue of the contract:
   - the balance of claims and counter claims introduced in the current account shall be established once a year;
   - the party managing the current account communicates the balance to the other party in writing with an itemized list of transactions;
   - the other party is entitled to contest the balance or the receivables and payables that serve as the basis for computing the balance, in writing, within a preclusive period of 30 days of receipt of the written communication;
   - the individual claims on the current account cease to exist and are substituted by the current account balance:
     - in the absence of an objection;
     - upon the parties’ agreement regarding the items contested; or
     - if the court has ruled on the contest.

3. Legal consequences related to establishing the balance of current account:
   - the parties are not entitled to dispose over any of their claims on the current account, as their right of disposal applies to the current account balance only;
   - the period of limitation on claims held on current accounts shall be suspended until the balance is established;
   - the balance lapses according to the general provisions;
   - only the balance may be subject to judicial enforcement;
   - the guarantees of individual claims introduced to the current account can only be covered by the balance.

2.4. Other Nominate Credit and Account Contracts

1. Payment Account Contracts. Under such contract the account keeper undertakes to open a current account for the account holder for handling his financial transactions, and the account holder undertakes to pay the fee agreed upon. The account keeper shall accept the account holder’s payment orders and direct debit orders if these clearly indicate the amount of the transaction and the name of the payee. The payment order may be refused if the account holder fails to make available sufficient funds for the execution of the transaction. The account keeper is obliged to receive payment transactions to the account holder’s credit or debit in the name of the account holder, and to bundle them as deposits payable on demand or as deposits. The account holder is authorized to dispose over the balance of the payment account.

2. Payment Service Contracts. Under such contract the agent undertakes to pay a certain amount of money to the payee according to the payer’s instructions, and the payer undertakes to pay the fee agreed upon. The payment order may be refused until the payer provides sufficient funds for executing it. The agent is entitled to the fee, if the funds were either delivered to the payee, or credited to the payee’s account, or made available to the payee’s bank.

3. Factoring. Under a factoring contract the factor undertakes to pay a certain amount of money, and the debtor undertakes to assign his claim from third parties to the factor. If the obligor of the assigned claim (this is a third person) fails to satisfy it when due, the debtor becomes liable to repay the funds received with interest, and the factor is
liable to re-assign the claim. The factor is required to register the factoring assignment and the debtor’s name in the collateral register, by the lack of which the claim shall not pass to the factor.

4. Financial Leasing. Under such contract the lessor undertakes to make available for use an own thing or right for a limited period of time, and the lessee undertakes to accept the leased asset and to make lease payments:
- If the lessee has the right to use the asset up to or surpassing its economic lifetime.
- Or, if the use is stipulated for a shorter period, to acquire the ownership of the leased asset at the end of the term without consideration or at a price which is considerably lower than the market value.
- Or, if the total sum of lease payments reaches or exceeds the leased asset's market value prevailing at the time of conclusion of the contract.

Obligation of registration:
- If the leased asset is a real estate property, the fact of leasing and the lessee’s name shall be registered in the real estate register at the time of registration of ownership.
- If the leased asset is a movable asset or a right, the fact of leasing and the lessee’s name shall be registered in the collateral register.

The lessor guarantees that no third person has any right to the leased asset that can prevent or restrain the lessee’s use of it. In connection with any non-conformity of the leased asset, the lessor shall provide warranty, if took part in the selection of the leased asset. The lessee may collect the proceeds of the leased asset, and is liable for its public dues, costs, and for damages, which no-one else is liable for. The lessee shall make lease payments for periods defined in the contract in advance.
GUARANTEE AGREEMENTS

1. Guarantee Agreements in General

The Civil Code Book Six Chapter III Title XXI defines the contract of suretyship and the guarantee contract construction as a new contract type. This breaks with the regulatory concept of the old Civil Code, which defined the suretyship and the bank guarantee -functioning as the ‘predecessor’ of the guarantee contract- as part of the general provisions of the contract law, defined as supplementary binding contractual obligations.

2. Contract of Suretyship

1. The concept, subject of the contract of suretyship and the legal nature of suretyship. The concept of suretyship, the contract of suretyship is a type of guarantee contract by which the surety undertakes the obligation of performance to the creditor in the event of non-performance by the principal debtor. [Section 6:416(1) on the Civil Code] The suretyship is therefore the personal security of the obligation, in case the surety answers the creditor with his own assets in the event the debtor’s non-performance of claims for money or monetary equivalent of the value of other services stated as the subject of the primal obligation.

2. The subject of suretyship. The suretyship may be granted to secure one or more, existing or future, unconditional or conditional pecuniary claims of a specific amount or the amount of which can be determined. The subject of the ensured obligation at all time are claims for money or monetary equivalent of the value of claim.

3. Suretyship relations. Ancillary obligations arise from the contract of suretyship. The obligation of surety is therefore adjusted to the scope of primal obligation in content and scope. Consequently, the obligation of suretyship is not to exceed the obligation that was took on originally. However, it shall cover the consequences of the debtor’s non-performance and shall include the collateral claims that fall due after the suretyship is undertaken.

4. The types of suretyship. The Civil Code distinguishes two basic type of suretyship simple otherwise privilege of order suretyship and first-loss guarantee.

Suretyship in principle is the privilege of order suretyship. Surety is entitled to the privilege of order. The surety shall be entitled to refuse performance so long as the creditor is able to verify that he had attempted to recover the debt from the principle debtor but that did not lead to a result within a reasonable timeframe. [Section 6:419 on the Civil Code]

Suretyship may be a first-loss guarantee in the base of the parties’ expressed agreement, or the provision of the law. First-loss guarantee is an exception from the privilege of order, where the surety cannot enforce the privilege of order. In these cases, therefore, the creditor can assert claims from the debtor and or the surety. [Section 6:420 of the Civil Code]

The law regulates a specific type of suretyship the construction of the so-called deficiency liability. In case of a deficiency liability the surety expressly covers that part of the debt that cannot be recovered from the debtor. [Section 6:421 on the Civil Code]

5. The performance of the surety, termination of the surety’s obligation. Duess of surety's performance. The surety shall be required to perform upon being requested to do so by the creditor. The surety shall without delay perform to the creditor and shall forthwith notify the debtor of performance. In the case of refusing performance, the surety without delay shall forthwith notify the debtor and the creditor of its refusal to perform, indicating the reasons.

After the surety’s performance the surety is entitled to recover the claim from the debtor. (regress) To
this end the creditor shall forthwith deliver to the surety all documents and shall provide all information that may be necessary for the surety to recover his claim from the debtor [Section 6:422(1)-(4) on the Civil Code].

6. Termination of suretyship. The surety’s obligation will be terminated, and the surety will be released from his obligation:
   - Following the expiry of a fixed term suretyship the surety shall be relieved of all obligations,
   - In case of an open-term suretyship—if an open-term suretyship covers all existing and future obligations of the debtor toward the creditor—the surety shall be entitled to terminate the contract of suretyship by giving at least three months’ notice.

7. The legal consequences of the surety’s right of exoneration and the irrecoverability. If the creditor waives any right securing the claim, or if the claim has become otherwise irrecoverable for reasons attributable to the creditor or if recovery becomes increasingly burdensome, the surety shall be exonerated inasmuch as he could have received satisfaction based on his claim for compensation against the debtor. [Section 6:424-6:426 on the Civil Code]

8. The obligation of multiple sureties. If suretyship is promised by more than one person for the same liability, the sureties shall be subject to joint and several liability toward the creditor. The internal interdependencies of the sureties should be assessed depending on the fact whether the sureties took suretyship independently, or jointly. Multiple independent sureties. If suretyship is concurrently promised by more than one person independently, in their relationship the sureties shall be subject to liability in the sequence they have undertaken to provide suretyship. [Section 6:427(1)-(2) on the Civil Code]. Joint multiple sureties. If suretyship is jointly promised by more than one person, in their relationship the sureties shall be subject to liability in proportion to their exposure. [Section 6:427(3) on the Civil Code]

3. Guarantee Contracts

1. The concept, subject and legal nature of the guarantee contract. The concept of the guarantee contract. Based on the guarantee contract the guarantor undertakes a commitment under which a specified payment is to be made to the creditor subject to the conditions laid down in the statement. [Section 6:431(1) on the Civil Code] The subject of the guarantee contract is the guarantor’s commitment under which payment is to be made to the creditor -subject to the conditions laid down in the statement. The form of which is the statement of guarantee. The guarantee contract is created by the acceptance of the statement of guarantee by the creditor. The obligation of the guarantor set out in the statement of guarantee is independent of the obligation for which he has promised to answer. Based on the concept of independence, the obligation does not depend on the validity, effectiveness, the possible termination and the degree of secured obligations, or the breach of contract. The absence of relationship means the guarantor may not enforce the same objections that can be made by the debtor against the creditor. [Section 6:432(1) on the Civil Code]

2. The validation of guarantee, guarantor’s rules of performance. The right of enforcement of the guarantee (drawing right) is an individual right of the entitled person, a person-related right. The creditor may not transfer the right of enforcement of the guarantee without the guarantor’s consent. However, he shall be entitled to designate a person to whom payment is to be made by the guarantor. The practice of the drawing rights therefore means that the creditor may instruct the guarantor to perform in his stead to a third person [Section 6:433 on the Civil Code]. The guarantor is is obliged under the guarantee to fulfil the payment if the creditor requested payment. The call for payment shall be executed in writing (formal requirements) and the content must exactly comply with the requirements specified in the statement of guarantee (substantive conditions). The guarantor shall have the right to affect all objections to which he is entitled in his own right against the creditor. If the guarantor refuses performance, shall make a statement and -indicating the reasons- notify the debtor and the creditor of its refusal to perform. [Section 6:435(3) on the Civil Code] This may happen if, based on the information at the guarantor’s disposal, the creditor exercises his drawing right in a manner which manifestly fraudulent or in bad faith.
1. The Basic Concept and Status of Insurance Contracts in Private Law

1. Insurance law—public and private—legislation, which strongly itemize the aspects of consumer protection. The insurance contract can traditionally be classified as the commercial-private-law types of contract, because the economic-commercial (business) life has inherent risk and danger, dealing with the consequences of which by creating a risk and danger pooling the best tool is the insurance. The insurance contracts are in many respects different from the traditional contract model—special peculiarities to them are the following characteristic attributes presented:

- they are risk-weighted contracts, because the risk and uncertainty elements are very strongly present
- praeclare (liability) service obligation on the part of the insurer
- the imbalance between the parties is inevitable in the case of individual insurance
- the so-called unilaterally (claudication) cogent rules which means that the insurance company can unilaterally derogate from the insurance policy if it benefits the assured
- in this contract the good faith and integrity requirements are of a specifically high importance in every section of the contract
- the insurance relationship can also be based on law and membership

2. The legal basic concept of the insurance contract:

- Insurable interest: there is no insurance without interest, in form of property or personal the insurer undertakes to provide coverage for damage.
- Insured value: the value of the insurable interest
- Insured amount: the upper limit of the liability (service delivery) of the insurer
- Insurant: the carrier of the insurable interest
- Contracting party: those who concludes the contract on behalf of an interested person
- Beneficiary: the person eligible for the insurance sum
- Insured event: its occurrence is an indispensable condition for the insurance company’s performance, although the insurance company also can provide loss prevention side services, must have occur after the start of the risk-carrying
- the insurance period: the insurance period is specified in the contract to which the fee applies, it is as a rule a year

3. The concept of the insurance contract: the insurance is a coverage originating from risk pooling for the defined and insurable risks of the insured person and premium paid proportional to risks. According to the Civil Code under an insurance contract the insurer undertakes to provide coverage for the risk specified in the contract, and to provide settlement or benefits for loss arising upon the occurrence of a specific future event after the starting date of risk coverage. The insured person undertakes to pay an insurance premium agreed upon. Insurance contract only be made against payment the free format is conceptually excluded. Subjects: insurer, the person, which organizes the persons of the community exposed to similar risks under the insurance and takes their risk against a fee. The clients are those persons who, get into a contractual relationship with the insurer as part of an insurance.

4. The division of insurance contracts is the following: the insurance contracts are categorized in the base of the insurer’s service to indemnity insurance and fixed-sum policies.

- In case of the indemnity insurance the insurance company’s service covers the payment for the insured person’s loss in the amount and in the manner defined in the contract.
In case of fixed-sum policies the insurer pays the payment or according to a pre-defined calculation method of a sum specified in the contract, regardless of the effect of the assurance event on the financial position of the client.

Individual and group insurance: Those insurances are considered individual insurance, in which the insured are tightly and precisely specified (by name). In contrast, in case of the group insurance the insurance circle is not closed and exact (by name) but to determine who qualifies as an insured person is based on the belonging of a group (association) the legal or other relationship between the contracting party and the insured.

5. Contracting: According to the Civil Code a typical instance is that the offer regarding the insurance is made by the insurer. The insurance contract is generally created by the parties’ written agreement, but the written agreement can be replaced by the issuing of a document or bond verifying the insurance cover. If the contracting party is a consumer, the contract shall be executed also if the insurance company does not respond to the offer.

6. The starting date of the contract is of importance because of the risk coverage. According to the Civil Code the insurance company shall commence at the time of presentation of the offer. Besides this important is regarding the start of the risk coverage the liability of the premium (or first instalment).

The coverage of risk by the insurance company shall commence at the time fixed by the parties in the contract or, failing this, at the time the contract is concluded. The parties may agree in writing in that the insurance company is to cover the insurance risk from such point in time preceding the date of conclusion of the contract: this instance is the retroactive coverage. There is a possibility for preliminary coverage which shall remain in effect until such time as the conclusion of the contract or refusal of the offer, not exceeding ninety days.

The insurer in case of a considerable increase in the insurance risk, the insurance company shall be entitled to amend the contract or may terminate the contract.

With the conclusion of the contract the main obligation on the part of the insurer starts, the praestare service and the obligation to pay premium is the start of the obligation of the insured. The delay of payment of the first or continuous premiums of the contracting party only leads to the termination of the insurance contract if the insurer previously warned the insured in writing with no avail. The insurer shall indicate in the request for payment the potential legal consequences. In the event of non-compliance, the contract shall be terminated with retroactive effect to the original due date, except if the insurance company forthwith moves to enforce its claim by judicial process.

2. The Individual Insurance Contracts

1. According to the indemnity insurance contracts the insurance company’s service covers the payment for the insured person’s loss in the amount and in the manner defined in the contract. The indemnity insurance contracts offer coverage for numerous asset risk: vehicle damage (casualty and collision), fire and elemental damage, and damage that occur during transport, agricultural damage, but the indemnity insurances include, for example, the liability insurance, legal expenses insurance or funeral insurance. The peculiarity of the indemnity insurance is that the insurer does not provide its service by paying a monetary amount, but it can also provide it in kind: for example, in the framework of the assistance-insurance the insurer may, if the customer’s car fails abroad, organize the transport of the car home, passengers’ accommodation and return travel to home.

The main principle of indemnity insurances is the prohibition of over-insurance. The coverage shall not exceed the value of the damages, because that would be over-insurance.

The so-called exclusion applies, when the insurer exhaustively set out the cases which don’t fall into the insured risk, so those do not constitute an insurance event, therefore, the insurance service not provided. In contrast, the exemption from liability is if the insurance event occurs, but the reasons for which cannot be expected from the insurer to fulfil.

2. The liability insurance is an indemnity insurance, in which the insurance company undertakes to reimburse the customer for any damages and any grievance fees, which are due by duty to a third person for property and personal damages to compensate. In connection with many activities the legislation requires the mandatory liability insurance, where the victims protection justifies this. (e.g., vehicle operation, health services, law, notarial activities)
The insurance company shall refuse payment obligation if the damages have been caused unlawfully, either willfully or by gross negligence by the customer or a person belonging to their interest.

The insurance provider fulfills their payment duty not to the insured but directly to the injured party. This rule takes into account the best interest of the injured party: eliminates the possibility that the insured expend the insurance amount for something else. However, the injured party’s claim may not assert directly against the insurance company but can demand the delivery of fulfillment from the insured and in the base of the legal relationship of liability the insured may demand from the insurer to deliver the service for the injured party.

3. The fixed-sum insurance can be taken to ensure the human risks. These risks cannot be expressed financially, therefore the parties are free to determine the amount of insurance. This freedom is implicitly not only within framework of one contract but applies for several contracts as well: the client may take any number of insurances for a specific insurance interest or risk and may demand the full sum insured on each of them if the insurance event occurs.

In connection with fixed-sum policies, the written consent of the insured person shall be required for concluding or amending the contract if he himself does not conclude it. If an insurance contract is concluded without the approval of the insured person, the section in which the beneficiary is named shall be null and void, in such a case, the insured person or his heir shall be construed as the beneficiary. It is reasonable to assume that the insurance is in the interest of the insured person if the beneficiary is himself or in case of his death his heir.

4. The Civil Code divides life insurances into two subcategories: term life insurance and ordinary life insurance. In case of term life insurance (death insurance) the insurer fulfills payment to the beneficiary only if the death of the insured occurs during the term of the insurance. If at the time of the conclusion of the insurance term the insured is still alive, the insurance concludes without payment. The ordinary life insurance is characterized by the expiration service and cash surrender value: only these insurances have residual rights.

The beneficiary is the person to whom in case of a fixed-sum insurance the insurance sum is payable. The beneficiary is the person named in the contract or a holder of a bearer policy. Not only the heir of the insured person can be the beneficiary but the insured person as well, due to the ordinary life insurances have the possibility to pay the insurance sum in the life of the insured person, therefore the insured heir is only the beneficiary in case of the death of the beneficiary. The insurance sum does not constitute as part of the inheritance if the beneficiary is the heir of the insured.

5. Accident insurance means the insured risk is the insured person’s accidental death, health impairment or disability resulting from an accident. The insured person only a natural person can be and the insured risk cannot include damages from accident that are purely financial damage.

6. The health insurance contracts can be indemnity insurance and fixed-sum insurance or the combination of those. Insurances aimed at restoration or retention of health, or insurance to compensate for the indirect disadvantages caused by the loss of health can be demarked. Within the indemnity insurances the health insurances for subsequent reimbursement and health insurance for health services can be distinguished.
CONTRACTS FOR MAINTENANCE AND LIFE-ANNUITY

1. Services directly for maintenance and for annuities for maintenance are peculiar institutions, therefore these are subject to special legal regulations concerning many questions such e.g. as:
   - Set-off is permitted only against claims for maintenance overpayments [Section 6:51 § 1].
   - The creditor is not obliged to accept performance offered by third parties because the service is bound here to a specific person [Section 6:57 § 1];
   - The claim for maintenance and annuities is bound to the person of the obligor, therefore the assignment of such claims is null and void.
   - Service provided and used for subsistence cannot be reclaimed by title of unjust enrichment [Section 6:581].
   - In the case of negotiorum gestio, the intervention is considered appropriate to fulfil the obligation to provide maintenance even against the will of the person obliged to provide it [Section 6:584 § 2];
   - If several descendants succeed together, each heir shall add the value of advancements they received from the decedent during his lifetime to the value of the estate. However, maintenance provided to descendants being in need of support cannot be treated as advancements even it was expressed by the testator [Section 7:56 §§ 1 and 3];
   - The value of maintenance given to a spouse or domestic partner and descendants do not pertain to the basis of a compulsory share of inheritance [Section 7:81 § 1 point d].

2. a) The contract for maintenance, regarding the object of the service, is peculiar as compared to other contracts:
   - because this service is special and individual, and;
   - because, albeit some elements of this service indeed occur in many other contracts, this contract unifies these elements in a very specific way.

The main specificities and characters of maintenance contracts and the services thereof are as follows:
   - the contract necessitates a strong confidentiality between the partners and a close co-operation thereby;
   - the service is mutually and especially bound to the personality of the debtor;
   - the alimentary service has a character of supplying, feeding, maintaining;
   - the service is alike annuity;
   - the irreversibility of the service (there is no way for an in integrum restitution);
   - the long lasting and durably continuous character of the service;
   - the contract’s enhanced risks.

b) Maintenance obligation can be based on law, too. The factual grounds of such ex lege duties may be: termination of matrimonial relationship or divorce, and the lack of ability of self-support [Section 4:29 § 1]; termination of civil partnership [Section 4:86 § 1]; family relationship of lineal descents [Sections 4:96 § 1; 4:194 and 196]; to the minor by the sibling of legal age [Section 4:197]; to blood children, stepchildren and foster children, in the same line; and to the biological parent and stepparent and foster parent, in the same line [Sections 4:198–200].

c) Under a maintenance contract to be concluded in writing, the person owing maintenance undertakes to provide care to the person to whom maintenance is owed and to ensure the sufficient living conditions, and the maintenance creditor undertakes to provide compensation. Maintenance includes housing and home, sufficient nutrition and clothing, care, in the case of illness, nursing and health care, in case of death, a proper burial.

d) The termination of the contract:
   - upon the maintenance creditor’s death,
   - upon the death of the obligor, the obligation devolves to the heirs according to the regulations governing liability for the debts of a decedent, if the support provided up to the death does not cover the consideration,
   - if the contract provides maintenance to more than one person, in case of the death of one of them, the surviving party has the right to demand the continuation of indivisible services, including those required to maintain prevailing living conditions, and a commensurate part of divisible services.
e) If the obligor receives ownership to a real estate property in exchange for maintenance and fails to provide adequate security for his obligations when requested, a right to maintenance shall be registered in the real estate register on the transferred property as encumbrance at the maintenance creditor’s request. If the obligor breaches the contract, the maintenance creditor may seek satisfaction from the security or from the real estate property, if the mentioned encumbrance has been registered.

f) Amending and terminating maintenance contracts:
   – The court alters the contract at the request of either party, in consideration of the interests of both parties, if sustaining the contract, as it is, appears unreasonable, especially if the parties’ relationship has deteriorated.
   – If maintenance in kind has become impossible as consequence of the conduct or circumstances of one of the parties, either party is entitled to request the court to transform the contract into a life-annuity contract either permanently or until the aforesaid circumstances are changed.
   – If such modification fails to facilitate the object of the contract, either party is entitled to request the court to terminate the contract.
   – The court is not bound by the parties’ request but may not order a consequence that is protested by both parties.

g) Gratuitous type of maintenance:
   Unless otherwise suggested by the circumstances, no consideration is due for maintenance services based on a contract concluded by close relatives. Such contract is terminated also upon the death of the person owing maintenance.

3. a) Under a life-annuity contract the annuity provider undertakes to provide a specific sum of money or other fungible property to the annuitant periodically, and the annuitant undertakes to provide compensation. The annuity shall be paid monthly, in advance. The annuitant is not entitled to bring action to demand any payments that are 6 months overdue and have not been enforced without substantial reason (naturalis obligatio).

b) Life-annuity contracts’ characters differs from that of maintenance contract as follows:
   – confidential and personal characters exist but are not decisive;
   – irreversibility of services is much lower;
   – the method of alimentation (annuity) profoundly differs;
   – aleatoric character because of higher risks is present as well.

c) An annuity-obligation can be based either on life-annuity contract, or on agreements as to succession, or on life insurance and accident insurance contracts, and on the amendment of maintenance to life-annuity contract.

Annuity-obligations may also be based on law, typically in case of some certain damages such as the ones that emerge as recurrent future losses [Section 6:527 § 2]; decrease of working capacities and loss of income [Section 6:528]; death of a maintenance provider and the loss of maintenance [Section 6:529 § 1].
1. According to the Laws of Hungary either natural or legal persons have the right to achieve their common goals by entering into such relationship the result of which will be a separate legal subject (business companies, associations, foundations) or just concluding a civil law partnership agreement which does not result a separate legal personality for the partnership. In course of the operation of the CLP not the partnership itself but the members of it will be the subjects of all rights and obligations resulted by the said operation. There is no need neither legal opportunity for any authority registration in the interest of forming this type of cooperation. A verbal, written agreement or implied conduct of the members itself is necessary and enough to constitute the partnership.

2. “Under a civil law partnership agreement the parties (hereinafter: members) undertake to cooperate in order to achieve their common goals and to make capital contributions necessary for achieving said common goals, and to bear the risks of their activities collectively.” (Section 6:498). It follows that the existence of four joint conditions are inevitable for the birth and existence of a CLP: common goals, cooperation, capital contribution, and common risk bearing. As to the goals the Civil Code does not provide any definition. Neither business goals are excluded but CLP is hardly a proper form for regular business activity since the existence and operation of it—in lack of any authority registration—is not transparent enough for the business partners. By operating a CLP, the purpose of the members is rather harmonizing their activity for example appearing in different tenders, public procurements or just joining their efforts for carrying on sport, cultural or other social activity without operating and association. Each member shall provide capital contribution according to their agreement (in lack of it the proportions shall be equal). The member who fails to provide the contribution agreed upon in the contract can be sued by either of the other members for performance as contracted. This behaviour of the member would result even the exclusion of this member.

2. The Operation of CLPs: Administration and Representation

Administration means the internal decision-making in the questions concerning the achievement of the common goals. Members shall be entitled to manage the partnership’s affairs collectively. Members may also provide that authorization for management is granted to a certain member or members. Non-members shall not be granted management rights. Management shall be carried out personally (Section 6:503). Representation means making legal declarations necessary for achieving the goals of the CLP towards third parties. Members may grant authorization in the partnership agreement to either of the members to represent the other members in dealings with third parties. While administration is strongly connected to the membership the right of representation can be provided non-members, too.

3. External Relations

Among the external relations one of the most important issues is the obligations of the members to fulfil their commitments arising from contracts concluded in the interest of realizing the goals of the CLP. There is no express rule establishing joint and several liabilities of the members. The form of liability depends on the rules of multi-party obligations (6:28-29, §). The other important question is whether the creditor of a CLP member, in respect of his claim, shall have the right to acquire those assets which the member of the CLP fulfilled as his capital contribution for the purposes of the CLP. The contribution is in fact the property of the member and not that of the CLP, but it cannot serve directly the purposes of satisfying the claims of the
creditors of any member. The creditor can lay claim when the CLP agreement is terminated, and the members made the settlement of final accounts. The creditor shall file to have this share attached, and by doing it he shall be entitled to exercise the right of termination that is customarily due to the member [S. 6:508 §§ 1-3].

4. Termination of CLP and/or Its Membership; Settlement

1. The CLP is not more than a contractual relationship which connects, unifies its members without resulting a separated legal subject (legal person). It should be a consequence of this characteristic of the CLP that in case of secession of any member because of any reason the company shall be ended. However, the Civil Code provides the opportunity of avoiding this consequence in certain situations. The reasons of termination the agreement and the membership as well can be as follows:
   – termination by notice with a three months’ notice period,
   – termination by notice without notice period because of substantial reason,
   – death or dissolution of a member.

All the above cases lead to the termination of the membership. Exclusion of a member is an additional reason of terminating just the membership and not the agreement. Reasons mentioned under first and second issue above shall unavoidably lead to the termination of the CLP, too.

As general rule, the death (dissolution) of a member also leads to the termination of the CLP but surviving members may decide to carry on the agreement without the deceased or dissolved member.

The legal effect of exclusion is not the termination of the CLP but the termination of the membership of those members whose behaviour or circumstances attributable to him are available to base the right of any other member to terminate the agreement with immediate effect.

2. If the partnership agreement is terminated or the membership is terminated accounts shall be settled among the members or the excluded member and the others or the successor(s) of the dead (dissolved) member and the other members.
1. Recognized Couple Relations in Hungarian Law

There are three recognized—in the same time emotional and property—relationships between two humans by the Hungarian Civil Law:

- **Marriage**, which is a *relationship between one man and one woman* according to Family Law rules of Civil Code (Book Four). Marriage shall be considered contracted if a man and a woman together appear before the registrar in person and declare their intention to marry. No two persons having the same sex can establish marital relationship.

- **Registered partnership**, which can be established *between two persons having the same sex* according to the rules of Act XXIX of 2009. This relationship provides similar legal status like marriage with some exceptions, only. The condition of establishing this partnership is the registration by the registrar in person. In lack of registration the couple of two persons having the same sex can be recognized as civil partnership, only.

- **Civil partnership**, which can be established *between two persons having either the different or same sex* according to the provisions of Civil Code [Sections 6:514–517].

2. Characteristics of the Civil Partnership; Establishment and Termination

Civil Code defines civil partnership as it “means when two persons are *living together outside of wedlock in an emotional and financial community in the same household* [Section 6:514 § 1; hereinafter: „cohabitation”), provided that neither of them is engaged in wedlock or partnership with another person, registered or otherwise, and that they are not related in direct line, and they are not siblings.” This is a contractual relationship which does not result any marital relationship. Civil partnership is just a matter of facts (“*de facto*” relationship) mentioned in the above cited provision. Registration of this relationship is not necessary, but the couple can apply for entering their relationship into a register managed by a Notary Public. This way they can be *partners certified by registration*. Civil partnership shall terminate upon the couple's marriage or their entry into registered partnership, or when their relationship is terminated.

3. Property relations of the civil partnership

There are *two opportunities* for the partners to manage their property relations:

- **Concluding a partnership contract** which shall be considered valid if executed in an authentic instrument or in a private document countersigned by an attorney. It may contain any provision relating to property rights, which could apply to married couples under contract or in accordance with the Civil Code.

- **Rely on the provisions of Civil Code Section 6:516.** This way the partners shall be considered independent in their property acquisitions during their cohabitation. If cohabitation is terminated, either partner may request the division of property jointly acquired during the period of cohabitation in proportion to their contribution. Work done in the household and in child raising, and in the other partner's enterprise shall be construed as contributing to acquisition. If this ratio cannot be determined, it shall be considered equal, unless this would constitute inequitable financial loss in respect of either of the partners.

The partners may also enter into an agreement regarding further use of their common home following the termination of their partnership.
1. General Provisions and Common Rules on Liability for Damages

1. *The tort law is not the same as liability for damages*, the compensation for damages is a wider obligation. The compensation obligation is a liability penalty if unlawful conduct caused the damage, whether this behaviour is a non-performance in either non-contractual delictum, and in the latter case imputability adds to the unlawfulness. The tort law has fundamentally cogent norms, pluralist, legislation of private law without creating a homogeneous legal regime.

2. The private law science distinguishes the *private law obligation*, from the liability. The obligation means on the part of the law *commanded behaviour* towards the entitled one without sanctions, defenceless as a pure legal requirement, while the liability means the totality of sanctions, pressure tools against person and property, with which the law enforces to its command. Among the rules of the civil law there is several obligation and norm without sanctions; for instance, the declaration of the good faith and fair procedure requirements.

The obligation to pay compensation is a kind of civil law sanction system that has a character of liability. The *role may be of primary importance* because the claim for property is based directly on an act of unlawful and attributable damages but, in addition to other private law consequences, it may also be applied as *supplement*, of course, also in case of liability conditions. Where a private law infringement results in damages, the consequence will only be to establish liability for damages if it is proven.

3. *The goals and principles of liability for damages*. The obligation to pay damages, as sanction charge, created as a burden on the tortfeasor, which always assumes a *legal basis* established by the aggrieved party. If the legal basis of the damages is missing, then the damage shall be the responsibility of the subject (*casum sentit dominus*). The aim of the liability for damages is *prevention and reparation*. The full compensation principle should work in parallel with the *prohibition of damage profiteering* because ultimately that is what has a prevention-disciplinarian effect. In the event of damage profiteering the claim for the granting the surplus (profit) is not a claim for damages, but an issue of enrichment, and in that case, it is part of the *unjust enrichment*.

4. The basic forms of liability:
   - *personal and financial liability*: In the first case with its person (e. g. gratification) in the latter case, in civil law typically a person is liable with its assets (liability).
   - *objective and subjective liability*: objective liability is the liability, which is independent of the tortfeasor knowledge, fault, while the subjective liability, the fault-based liability means that the standard of the specific situation would be the normally expected behaviour.
   - *direct and contributory liability*: in the case of direct liability the obligation and liability coincidence, the same person is liable and obliged. In case of the contributory liability the contributory obligor’s liability, namely liable together with the tortfeasor (joint and several liability) but it may be underlying when the claim cannot be collected from the debtor, therefore the underlying responsible steps up. (e. g. the simple guarantor).
   - *unlimited and limited liability*: the liability of the civil law in general is unlimited, which can be direct, too (such as the liability of the civil society members), and underlying (for example, liability of the members of the general partnership company is underlying). There is a space in private law for the limited liability, as *truncated obligation*, in which cases the liability is limited to specified property or assets (such as the *pro viribus or cum viribus* liability, as well as the liability of the member of a Ltd).
   - Additional liability forms know by the civil law:
     - *custodia liability* until *ris maior*
     - *del credere liability*: e. g. the non-performance on the side of the consignee
     - *result liability*: e. g. the liability of the contractor
• absolute liability: in which exculpation is not tolerated, damage installation originating from risk installation.

5. The separation of contractual and delinquent liabilities: the private law liability is the dual, i. e., it became separated to the non-performance (contractual) and the non-contractual tort liability (delinquent). In the case of contracts, responsibility for regulation is in fact a risk sharing and risk installation. The contractor cannot save himself; by verifying that there is a lack of imputability, as it is sufficient with the non-contractual liability (delinquent).

The two liability-situations are different due to the different interests of the tortfeasor and that of the aggrieved party. While with the contractual legal relations the parties at the time of concluding the contract have the possibility to better calculate the possible risk damages and accordingly convert the contractual commitments, in the meantime, the non-contractual damage is usually unexpected, the between tortfeasor and the aggrieved party damage obligation generated typically by the unlawful damage.

In case of a delinquent liability, before the damaging behaviour between the tortfeasor and the aggrieved party only an absolute structure legal relationship exists, and the violation of the abstaining prohibition norm creates the relative structure damage obligation. In case of a contractual liability, however, a relative structure legal relationship existed prior to the tort, namely a contract, which sets out the rights and obligations of the parties. With delinquent liability the general prohibition on tort suffers (neminem laedere principle) and what makes the behaviour (any behaviour) unlawful is exactly the damage attached to it. In case of the contractual liability however, the damaging behaviour is the non-performance of the obliged behaviour in the contract, which is undertaken voluntarily after considering the risks and circumstances of the contract.

2. Liability for Damages (Contractual) Caused by Non-Performance

1. The conditions for exculpation from liability for damage caused by non-performance are set forth in Civil Code based on international examples and require the simultaneous (cumulative) existence of three conditions:

- First the Civil Code requires for exculpation from liability for damage caused by non-performance, that the circumstances of the non-performance is outside of the control of the defaulting party; outside of control means a circumstance that the defaulting party cannot influence, it is not either similar in content nor function with the category of “interest” used several times in the Civil Code: the “interest” has a risk allocation function without liability in law.
- The second condition of exculpation according to the Civil Code is the fact that to the defaulting party the circumstances outside of his control is objectively not foreseeable at the time of the conclusion of the contract, forceeability according to the general human experience objectively taken after a careful and prudent procedure; an additional condition is that the given fact was, in the general experience, objectively probable to cause the damage.
- The third of those cumulative conditions is that it was not to be expected that the parties to avoid the circumstances hindering the contractual performance or to avert the damages; this condition of the exculpation requires the imputability criteria of the Civil Code, the foreseeability of the obstacle is required by the Civil Code to be inspected at the time of the conclusion of the contract.

The Civil Code accepts exculpation proof system: the burden of proof is on the defaulting party for all three exculpation conditions.

2. Under the principle of the right to full compensation and the extent of liability: The Civil Code in both liability cases initiates from the principle of full compensation. This principle applies without limitation to the damages directly by the services due to the non-performance. The defaulting party is liable for the damage therefore shall perform full compensation for the damage in the service (adhesive damage) justified costs required for the contractual performance, of the hedge purchase (or hedge selling costs) etc. with these damages, as a possible consequence of non-performance, the defaulting party always shall calculate in the event of non-performance.

The financial losses and pecuniary advantage lost (lucrum cessans) caused by the non-performance in the assets of the aggrieved party is part of the full compensation. The damages should, as far as possible, bring the aggrieved party into a position as would have been the case in the case of a contractual performance. The application of the foreseeability clause means, that the consequential damage and lost
profit recoverable shall not exceed the damage, which the defaulting party had foreseen or anticipated at
the time of the conclusion of the contract in the base of the facts and circumstances which he knew or
ought to know as a possible consequence of the non-performance at that date.

3. Liability for damages in case of gratuitous contracts: the fact of gratuitousness justifies the mitigation
of liability. The obligor of the free contract is liable for the damages if, the damage is caused by wilful
conduct or failing to comply with the relevant disclosure obligations relating the service. For the damage
caused in the assets of the aggrieved party the liability is more rigorous, in relation to these damages the
standard is the imputability of the exculpation.

4. In case of liability for subcontractors and agents, under the Civil Code a subcontractor or agent is, who is
requisitioned in order to perform the contractual obligation. According to the Civil Code, any person who
employs another person to perform his obligations or exercise his rights shall be liable for the conduct of that person as if he
himself had carried out the obligation or exercised the right. If the obligor has not been authorized to employ other
persons, then his liability is more stringent: he shall be liable even for damages that would not have occurred
without the employment of such person.

5. The relationship between contractual and non-contractual liability for damages. The rules of the non-contractual
liability for damages applies to the aggrieved party’s loss prevention, damage mitigation, to the liability of the
joint tortfeasors and to the method of compensation with that the contractual damage mitigation cannot be remitted
based on fairness.

In case of the existence of several liability compensation system, it may happen that a fact of a
compensation could be settled in more liability system (liability cumulation). According to the
non-cumul principle, the Civil Code excludes cumulation of claims and the aggrieved party’s claim for damages can only be
enforced against the tortfeasor under the rules of liability for damages caused by non-performance. The rule that
excludes parallel claims for damages is also a dispositive norm that the parties may agree with.

3. The Characteristics and Common Rules of Non-Contractual Liability

1. The unlawful tort is a general law delictum. Except a few exemption where the damage makes the conduct
unlawful, i.e. t is not necessary to reference special standards of illegality [Section 6:518on the Civil Code]. The
unlawfulness of the tort does not therefore need to be specifically demonstrated, the lack of unlawfulness is what is required
to be proven.

2. According to the general rule of liability: “Any person who causes damage to another person wrongfully shall be liable
for such damage. The tortfeasor shall be relieved of liability if able to prove that his conduct was not actionable.”

Consequently, the liability for non-contractual damages has four cumulative conditions:
   – Unlawfulness of behaviour
   – Occurrence of damage
   – No causal relationship shall be deemed to exist in respect of any damage that the tortfeasor could not and should not
     have foreseen.
   – Failing to prove the lack of imputability, i.e. the tortfeasor is unable to prove that during injurious conduct be acted,
     as in the given situation would normally be expected.

3. The torts shall not be considered unlawful, if the tortfeasor has committed the tort (the conditions excluding
the unlawfulness):
   – with the consent of the aggrieved party
   – against the assailant in order to prevent an unlawful assault or a threat suggesting an unlawful direct assault, if
     the tortfeasor did not use excessive measures to avert the assault
   – in an emergency, to the extent deemed proportionate, or
   – by way of a lawful conduct, and such conduct does not violate the legally protected interests of others, or if the tortfeasor
     is required by law to provide compensation.

4. Under the principle of the right to full compensation the tortfeasor shall cover:
   – any depreciation in value of the property of the aggrieved party
   – any pecuniary advantage lost; and
   – the costs necessary for the mitigation or elimination of the financial losses sustained by the aggrieved party.
5. **For the extent of liability**, in accordance with regulations and jurisprudence, the victim’s obligation is to prove the occurrence and extent of the damage. **Damage profiteering is not allowed.** The amount of compensation shall be reduced by any financial advantage of the aggrieved party resulting from the tort, unless this is deemed redundant having regard to the circumstances of the case.

The Civil Code ensures that **in cases of exceptional circumstances, the court may award compensation in an amount lower than the amount of the total loss.** This cannot, of course, be the subject of a judgement of a judge. In judicial discretion has an important role of performance, degree of imputability, social aspects, the nature and extent of the damage.

6. **Common rules of delictual liability for damages** are the following:
   - **In the event of the presence of imminent danger,** the endangered person shall be entitled to request the court, as it follows from the circumstances of the case:
     - to restrain the person imposing such danger from continuing such conduct;
     - to order the person imposing such danger to take sufficient preventive measures;
     - to order the person imposing such danger to provide sufficient guarantee.
   - **In case of joint tortfeasors,** the basis of the joint and several liability is the damage caused jointly.
   - **The aggrieved party shall be subject to the obligation of damage control and the obligation of prevention and mitigation of damages.** In the event of any actionable non-performance of those obligations, the tortfeasor shall not be obliged to provide compensation. Liability for damages shall be borne by the tortfeasor and the aggrieved party consistent with the degree of their culpability, or—if this cannot be determined—in proportion to their respective involvement. If the degree of involvement cannot be verified either, the tortfeasors and the aggrieved party shall cover the damages equally. The aggrieved party shall be liable for any omission by the persons for whose conduct he is responsible.
   - **The contractual freedom allows the mitigation of liability for damages,** but any contract term limiting or excluding liability for intentional tort or for causing damages resulting in loss of life, or harm to physical integrity or health shall be null and void.
   - **In the method of compensation,** the compensation in cash is the general and primary. The auxiliary, secondary compensation in nature is justified if the nature of the damage, the substitutability, reason and expedience require so. In determining the mode of compensation, the court shall not be bound by the aggrieved party’s request, however, court shall not order any mode of compensation such that is objected to by all parties.
   - If the extent of damage cannot be precisely calculated, the person responsible for causing the damage shall be compelled to pay a **general indemnification** that would be sufficient for compensating the aggrieved party.
   - **Dueone of compensation:** the time of the damage does not always coincide with the time of the tort. When the damage occurs, the **statute of limitations immediately begins.** A further consequence is that from the time when the occurrence of the damage, **interest shall be paid for the delay in compensation payment.**

4. Specific Cases of Liability

4.1. Liability for Highly Dangerous Activities: Hazardous Operations

According to the Civil code: “A person who pursues an activity that is considered highly dangerous shall be liable for any damage caused thereby. Where such person is able to prove that the damage occurred due to an unavoidable cause that falls beyond the realm of highly dangerous activities, he shall be relieved from liability.” These provisions on liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment. Any exclusion or limitation of liability shall be null and void; this prohibition shall not apply to damage caused to a tangible thing.

The **hazardous activity operator**: The person on whose behalf the hazardous operation is carried out shall be recognized as the pursuer of a highly dangerous activity. Where hazardous operations are carried out on behalf of more than one person, they shall be treated as joint tortfeasors.
If the damage is caused by more persons’ highly dangerous activity together, the conditions of liability are different in external and internal relations. In the relation between the joint tortfeasors and the third aggrieved party (external) there is an (objective) liability without joint and several imputability, in the relation between tortfeasors (internal) the general rules of liability shall be applied.

No compensation shall be provided for any damage insofar as it originates from an activity attributable to the aggrieved party (own fault). In the spreading of losses, the highly dangerous nature of the activity shall be taken into consideration to the burden of the operator. In case of hazardous operation there is an application for spreading of damages the operator shall not be subject to full liability toward the aggrieved party if the person has contributed to the occurrence of the damage, in proportion of his contribution. The period of limitation for claiming damages in connection with liability for hazardous operations shall be three years.

Where damage is caused by one hazardous operation to another, the operators shall be liable to provide compensation as commensurate according to attributability. If the damage is caused by a person other than the operator, the operator shall be liable to provide compensation as commensurate according to the attributability of the de facto tortfeasor. If the cause of damage is not attributable to either party, compensation shall be provided by the party whose highly dangerous activity is responsible for the malfunction that contributed to causing the damage. If the cause of mutual damage is a malfunction that occurred in the scope of both parties’ highly dangerous activity, or if such malfunction cannot be attributed to one of the parties, each party shall, where individual responsibility cannot be established, bear liability for his own loss.

4.2. Liability for the Acts of Another

Liability for the acts of employees: If an employee causes damage to third parties in connection with his employment, liability in relation to the injured person lies with the employer. Liability of the employee or the member and the employer or the legal person shall be joint and several if the damage was caused intentionally. Three conditions must be met to determine the employer’s liability for damages:

1. The tortfeasor is the employee of the employer
2. The employer is held liable if the employees’ liability would be determined based on the general rule of the liability of damages, the burden of proof of exculpation is on the employer.
3. The damage is in connection with the tortfeasor’s employment.

2. Liability for the actions of senior executive of a legal person: The legal person shall be liable for damages caused to third parties by the executive officer in that capacity. Liability for any damage caused by the executive officer intentionally lies with the executive officer and the legal person jointly and severally [Section 3:24 (2) on the Civil Code]. Based on the attribution principle the senior executive conducting in the duties and powers of the legal person is attributed as the conduct of the legal person.

3. Liability for the actions of agents: If an agent causes damage to third parties in connection with his assignment, liability in relation to the injured person lies with the principal and the agent jointly and severally. The principal’s diligent procedure is realized when he informed the agent of all circumstances relating the assignment, which is essential for the agent to administer the activity without causing damage. The diligence of supervision shall be investigated only in case when the supervision is necessary, and the principal has an opportunity to carry it out.

The principal shall be relieved of liability if he is able to prove that he has not acted wrongfully in terms of choosing, instructing, and supervising his agent.

In respect of permanent agency, the injured party shall be titled to enforce his claim according to the regulations governing the liability for damages caused by employees.

4.3. Liability for the actions of Non-Punishable persons

1. Non-punishable person is any person whose discretionary ability is limited to an extent whereby such person is unable to comprehend the consequences of his actions leading to the damage shall not be held liable for the damage he has caused. The Civil Code does not define the non-punishable persons nor the age limit, therefore the court shall in each case measure, whether tortfeasor is a non-punishable person. The non-punishable is not liable but in
his stead the custodian is liable. The person having custody of the non-punishable person at the time the damage was caused shall also be regarded as a custodian. The liability is not liability for another person but liability in wrongfully providing care and in exercising custody which enabled the tort of the non-punishable person. The custodian shall be relieved of liability if able to prove that he has not acted wrongfully in providing care and in exercising custody.

2. Compensation on grounds of fairness: If a tortfeasor has no custodian or the liability of the custodian cannot be established, under special circumstances the non-punishable tortfeasor can be ordered to provide total or partial compensation, if it is clearly warranted by the circumstances of the case and the financial conditions of the parties.

3. Actionable conduct: A non-punishable tortfeasor may not allege his mental incapacity or impairment if such condition was inflicted by the person himself.

4. Liability for the actionable conduct of minors: If damage has been caused by a minor who is punishable, and who has an appointed custodian, and the injured party is able to prove that the custodian has knowingly breached his obligations, the custodian as well as the tortfeasor shall be subject to joint and several liability.

4.4. Liability for the Actions of Public Authorities

1. The Civil Code for the liability for the actions of public authorities regulates the liability of administrative authorities, courts, public prosecutors, notaries public and court bailiffs.

2. Liability for damages caused within the scope of administrative jurisdiction shall be established only if the damage results from actions or omissions in the exercise of public authority, and if the damage cannot be abated by common remedies or by way of judicial review proceedings of administrative actions. If the damage was arising from the incorrect application of law, the basis of the liability could only be an abruptly severe interpretation or implementation of law. Liability for damages caused within the scope of administrative jurisdiction lies with the legal person exercising public authority. If the person exercising public authority is not a legal entity, liability for damages shall lie with the administrative body having legal personality, on whose behalf the relevant administrative body operates.

3. The provisions on liability for damages caused within the scope of administrative jurisdiction shall apply mutatis mutandis to liability for the actions of courts and public prosecutors, with the proviso that claims shall be enforced against the court or the Prosecutor General in connection with liability for the actions of courts and public prosecutors, respectively. If the acting court is not a legal entity, the claim shall be enforced against the court whose president exercises overall employer’s rights over the judges of the court having no legal personality. A claim may be lodged only if common remedies have been exhausted.

4.5. Product Liability

1. Liability for damage caused by defective products lies with the manufacturer of such products. The product liability breaks the enclosed double structure obligation and allows the injured party to claim instead of the contractual liability rules, non-contractual directly against the manufacturer, creating a direct link between the consumer and manufacturer and from the aspect of liability ignores the obligor, the distributor. Any limitation or exclusion of the manufacturer’s liability towards the injured party shall be null and void. The injured party may claim his right to compensation within a three-year limitation period.

2. The product. Product means any movable property, electricity, hardware, the software, medicine, etc.

3. Damage caused by defective products:

- any damage incurred by the death, bodily injury or any impairment in the health of a person caused by a defective product;

- any damage caused by a defective product to other objects valued in excess of five hundred Euros as converted to Forints, if such object is for private use or private consumption according to its intended purpose and if generally used for such purpose by the injured party as well.

4. Manufacturer, producer of a finished or semi-finished product, or raw material, furthermore the person who depicts himself as the manufacturer of the product by the indication of his name, trademark or some other distinguishing mark on the product, or importer. If the manufacturer of a product cannot be identified, all distributors of
such product shall be regarded as manufacturers until such distributors reveal to the injured party the identity of the manufacturers.

5. **Defective product:** A product shall be considered defective if it fails to provide a level of safety generally expected, with special regard to the purpose of the product and the way in which it can be reasonably expected to be used, the information provided in connection with the product, the date of the sale of the product, and the current state of scientific and technological achievements. A product shall not be considered defective solely in the base that subsequently a product providing a higher level of safety will be placed on the market. The burden of proof of defect lies with the injured party.

6. The manufacturer shall be relieved of liability if able to prove that:
   - he did not place the product on the market;
   - the product was not produced for retail purposes,
   - the product was in perfect condition at the time when it was placed on the market, and the cause of the defect developed subsequently;
   - at the time the product was placed on the market the defect could not have been discovered according to the current state of scientific and technological achievements; or
   - the defect in the product was caused by the application of a statutory or regulatory provision.

### 4.6. Liability for Building Damages

1. Based on the Liability for building damages provisions of Civil Code primarily the liability of those persons should be determined who have interest of damage prevention and forbidding. These persons typically are the owner, user, or any other interested person, who gains economic advantage by using the building. These provisions shall not affect the right of the responsible party to demand compensation from the person otherwise responsible for the damage.

2. To the extent of building damages three liability belongs:
   - damage caused to other persons by parts of the building that have fallen off or by any other deficiency in the building,
   - Liability for falling objects posted on the building,
   - Liability for damage caused by fallen, thrown or dumped objects.

3. The owner of a building shall be liable for damage caused to other persons by parts of the building that have fallen off or by any other deficiency in the building, unless the owner is able to prove that the regulations pertaining to construction and maintenance have not been violated and that he has not acted wrongfully in the course of construction and maintenance with respect to the prevention of damage.

4. The provision set out previously shall be applied to liability for damages caused by any object falling off a building, with exception that the person in whose interest the object has been installed on the exterior of a building shall be jointly and severally liable with the owner of the building. The object placed on the building shall not be a component, but a specific accessory, e. g., advertising signs, sign, flag, lighting equipment, decoration.

5. Liability for damages caused by objects that are thrown out, dropped, or poured out from a dwelling, or other rental premises lies with the tenant or other user of the dwelling or premises. If the tenant or user identifies the person who caused the damage, he shall bear liability as a surety. The tenant or user shall be relieved of liability if he proves that the person who caused the damage was on the premises unlawfully.

### 4.7. Liability for Damage Caused by Animals

**Damage cause by farming operations:** Any person who keeps animals shall be liable for damages caused by the animals to other persons, unless he is able to prove that he has not acted wrongfully in the keeping of animals. The keeper of a dangerous animal shall be held liable in accordance with the provisions on liability for hazardous operations.

**Liability for damage caused by wild game:** Liability for damages caused by huntble animals lies with the authorized hunter on whose hunting ground the damage took place. If the damage was caused in a place other
than a hunting ground, liability lies with the authorized hunter from whose hunting ground the animal arrived. He authorized hunter shall be relieved from liability if he can prove that the damage is the result of an unavoidable cause beyond his control. The period of limitation for claiming damages shall be three years.

5. Indemnification

For the damages caused legally, the tortfeasor is obliged to compensate if the legislation expressively orders. The rules regarding the content and method of compensation shall be properly applied. The Civil Code enforces compensation in the following instances:

- The owner shall permit access to his land for compensation if it is necessary for doing works of public interest [Section 5:25 on the Civil Code].
- The owner shall have access to the neighbouring land for compensation if it is necessary for the construction, demolition, reconstruction or maintenance of a building located on his land.
- Owners shall be entitled to demand compensation from persons in an emergency [Section 5:26 on the Civil Code].
- If the owner had a house built beyond the boundary line of his land in good faith, the neighbour shall be entitled to demand to pay compensation for damages for the use of the part of land occupied and for the depreciation in value caused therewith [Section 5:28 on the Civil Code].
- In the event of withdrawal or termination by the customer, the customer shall pay compensation to the contractor for damages, with the proviso that the amount of compensation may not exceed the contract price [Section 6:249 on the Civil Code].
1. Facts Establishing Obligation “Other” Than Contracts, Torts, Securities etc.

“Other facts establishing obligation” are facts, which are others than contracts and torts. These facts can be found not only in the Sixth Book on the Law of Obligations but in many other places all around the Civil Code. These can be classified as follows:

- the parties of legal relationships for settlement and that of compensation claims such as e.g.
  - final statement of account on the assets managed by the guardian of a minor or the curator of a person of legal age [Sections 2:37; 4:243–244],
  - compensation claims between community and separate marital property [Section 4:59],
  - wrongful possession [Section 5:9],
  - facts establishing neighbourhood rights [Sections 5:24–25];
- special cases of unjust (“ungrounded”) enrichments (not equal with unjustified enrichment!) such as:
  - surrendering the financial advantage acquired through infringement of rights to the person whose personality rights have been violated [Section 2:51 § 1 c],
  - the enrichment of the spouse by making a gain in consequence of a form of legal obligation where the other spouse participated in [Section 4:51],
  - the termination of the right of acquiring ownership of fruits, produces, or progenies of another’s thing before acquiring ownership of such advantages [Section 5:50 § 2],
  - construction works not being treated as annexation [Section 5:68 § 2],
  - compensation for increments in value of the thing achieved by extraordinary repairs or renovations carried out by the usufructuary at his/her own expense [Section 5:150];
- liabilities and responsibilities established by laws outside the law of obligations such as e.g.:
  - some peculiar species of liability for damages,
  - indemnification prescribed by laws such as e.g. damaging in case of emergency [Section 5:26], encroachment (viz. when the owner has a house built beyond the boundary line of his/her land; cf. Sections 5:28–29), expropriation [Section 5:43; and the Act CXXIII of 2007 on expropriation], use for public purposes (5:27), composites and compounds (viz. if the objects of several persons are merged or combined in a way that the separation thereof cannot be accomplished or can be accomplished at an unreasonably high cost; cf. 5:66),
  - compensation for the violence of rights of personality [Section 2:52];
- some nominate contracts such e.g. as:
  - contract for establishing a legal person [Section 3:4 § 1],
  - marriage contracts [Sections 4:34 § 1 and 4:63–68];
  - agreements as to succession [Section 7:48];
- entitlements for maintenance by law as e.g.:
  - maintenance of former spouse [Section 4:29],
  - maintenance of former civil partner [Section 4:86],
  - maintenance of minor or adult children [Sections 4:213 and 4:219],
  - maintenance of relatives [Section 4:194];
- special relationships of inheritance law similarly as obligations such as:
  - waiver of succession [Section 7:7],
  - demandable devise [Section 7:33],
• agreement on expected inheritance [Section 7:54],
• compulsory share of inheritance [Sections 7:75sqq],
– facts establishing obligations which are enumerated in the Sixth Book upon the law of obligations and which are not contracts, torts, and securities:
  • unjustified enrichment [Sections 6:579–582],
  • negotiorum gestio [Sections 6:583–586],
  • implicit conduct [Section 6:587];
  • offering rewards [Section 6:588] and public commitments [Sections 6:589–592].
This textbook summarises in details unjustified enrichment, negotiorum gestio and implicit conduct.

2. Unjustified Enrichment

1. The basic rules of the institution of unjustified enrichment is laid down in the Civil Code as follows [Title XXXII Sections 6:579–582];
   – according to the general clause of unjust enrichment [Section 6:579]: „any person who acquires any financial advantage without any legal title at the expense of another shall be obliged to return this advantage”;
   – the general obligation to return the advantage is called restitution; there are some exceptions to it:
     • any person who has lost the financial advantage before they are reclaimed shall not be obliged to return them [Section 6:579 § 2],
     • if the financial advantage is provided and used for subsistence, it cannot be reclaimed on the grounds of unjust enrichment [Section 6:581];
   – there also are some exceptions to these exceptions, in the case of which the general obligation of restitution applies regardless of the fact that the advantage was lost or it was provided and used for subsistence; i.e. the following unlawful acquirers shall be obliged to return the financial advantage in any case:
     • who obtained the advantage by a criminal act,
     • who obtained the advantage by acting in bad faith;
     • who lost the advantage by acting contrary to the Principle of Expectability regulated in the Section 1:4 declaring that “unless otherwise provided for by the Civil Code, persons shall act in private law relationships as it is generally expected in the specific situation”;
   – if a financial advantage cannot be returned in kind, its value shall be compensated [Section 6:580];
   – those ones who has jointly been unjust enriched shall be jointly and severally obliged to return the object or value of the unjust enrichment [Section 6:581].
2. The principles of unjust enrichment shall also be applied in several other cases such as e.g. to the following compensations for:
   – the proceeds and interests gained by the one party of an invalid or ineffective contract, who did not perform his/her service, or received the service gratuitous [Section 6:115 § 1];
   – the proceeds and interests gained by the one party of an invalid or ineffective contract, if these were not returned through in integrum restitution [Sections 6:119 § 2; 6:115 § 1];
   – the delivery of any works in progress, which are not yet finished, if the performance of a contract for services becomes impossible [Section 6:248 § 2];
   – the expenses emerged in case of negotiorum gestio if intervention was inappropriate [6:585 § 3];
   – the necessary expenses of a wrongful possessor acting in bad faith [Section 5:10 § 2].
3. The basic elements and contents of the legal relationship based on unjust enrichment are as follows.

The subjects of the legal relationship are, on the one hand, the enriched party who acquired a financial advantage without any legal title at the expense of another, and, on the other hand, the enriching party, at the expense of whom the enriched party acquired the financial advantage. There are other relevant legal notions with respect to the special standings of subjects such as:

   • an enriched party of bad faith is the one who has or, by acting in accordance with the Principle of Expectability, ought to have knowledge about the fact that he/she cannot have the financial advantage;
   • the enriched party who has lost the advantage by acting contrary to the Principle of Expectability is the one,
who has not acted as it is generally expected in the specific situation of losing the object or value of advantage.

4. The conditions giving rise to the determination of the facts of unjust enrichment are as follows:
   – the enriched party demonstrably acquires a financial advantage;
   – this financial advantage is acquired by him/her at the expense of another;
   – the enrichment has no appropriate legal ground.

5. The financial advantage acquired by the enriched one with no legal basis is a fundamental notional element of unjust enrichment. It is, however, irrelevant how the enriching party was impoverished. Therefore, there is no unjust enrichment if the party was not enriched by the decrease of property of the other party; this rather brings up the liability for damages. The value of the financial advantage does not necessarily correspond to the value of the other party’s harm of interest.

6. The phrase of “at the expense of another” does not necessarily mean a financial expense, but this notion incorporates every kind of harm of interests, typically such as:
   – a disposition with another’s asset without a legal title can produce an unjust enrichment regardless of the unlawfulness of this conduct (liability for damages may occur);
   – infringement of natural persons’ rights relating to personality or that of legal persons’ similar inherent rights.

7. The lack of the legal basis shall be considered with respect to the applicable laws and the general value judgement of society. According to this, legal basis lacks if the enrichment cannot be based on a valid legal title or an appropriate moral ground. Unjust enrichment occurs when the acquired financial advantage has never had any legal basis or it failed afterwards. Thus, unjust enrichment has two major classes of cases:
   – undue services such as undue payment, false performing surpluses, double performance, false addressing, false transfer, services performed in the base of an invalid or ineffective contract;
   – services on last ground, e.g. the obligor performs after the termination of a contract or performs one-sided after the counter-service of his/her service became impossible.

8. The obligation of restitution is a general duty, although there are many exceptions to it. The restitution becomes due in the following moments:
   – in the case of an enriched party of good faith, it becomes due when he/she cannot be further considered to be in good faith;
   – in the case of an enriched party of bad faith, it becomes due by the time of perfection of the enrichment’s acquisition;
   – if the enrichment was terminated by an action being inappropriate to the Principle of Expectability, it becomes due at the time of the loss of enrichment;
   – if the enrichment was acquired through a criminal act, without any exceptions, it becomes due by the time of perfection of the enrichment’s acquisition.

The extent of obligation of restitution incorporates the following three major questions:
   – the problem of the acquisition of the enrichment’s interim profits which is regulated by the rules of unlawful possession;
   – the question of the due date of the enrichment’s interim interests:
     • if the enrichment is money and there is no replacement value of the object of enrichment, the interest becomes due by the time of perfection of the enrichment’s acquisition;
     • if the enrichment is originally not money but its replacement value is money, the interest becomes due by the time of perfection of the replacement value’s acquisition;
   – the question of restitution of the enriched party’s interim costs and expenses emerged while possessing the object of the enrichment, which is also regulated by the rules of unlawful possession.

9. Losing the object of the enrichment is the most important fact which precludes restitution in two major groups of cases:
   – when the financial advantage discharges from the property of the enriched party, and there is no replacement value entering into his/her/its property until the reclamation of the enrichment;
   – when the enriched party acquires a replacement value but loses it until reclamation.

As a fact, occasion, or conduct, the loss of the enrichment’s original object or replacement value cannot be exhaustively defined:
   – as the conduct or behaviour of the enriched party, it shall be considered that an enriched party of good
faith has the right of free disposition with the object of enrichment until its reclamation: he/she may use it, utilise it, use it up, destroy it, waste it, lose it, transfer it, abandon it, derelict it (except the case of immovables, which cannot legally be derelicted) etc.;

- as an occasion, it shall be considered that the object of the enrichment may be perished by vis maior (force majeure), accident, or by another’s conduct or fact.

10. A joint unjust enrichment establishes joint and several obligation. Its prerequisite is that every element of the matters of facts of unjust enrichment shall exist together in case of every enriched party. In some cases, joint unjust enrichment occurs by law:

- the joint unjust enrichment of spouses, civil partners or registered partners;
- the joint unjust enrichment of civil law partnerships (cf. Section 6:498) and that of general partnerships (cf. Sections 3:138sqq);
- the joint unjust enrichment of the general partners of a limited partnership (cf. Sections 3:154sqq);
- the joint unjust enrichment by the unlawful acquisition by co-finders (see Section 5:54 § 2).

3. Negotiorum Gestio, Otherwise as Spontaneous Voluntary Agency

1. The negotiorum gestio is a spontaneous voluntary agency. It establishes a very special obligation, because it is based on a matter of fact which erects a contract-similar obligation without concluding a contract. Its notion is defined by Civil Code as follows: “Any person acting in a matter on behalf of another person without being authorized thereto by agency or otherwise shall be obliged to handle the matter as required by the interest and probable intent of the person in whose favour he/she has intervened.” (see in Section 6:583).

In typical cases, unauthorised agents intervene in another’s matter voluntarily and by knowing the lack of authorisation, but there are other cases, too, in which the unauthorised agent erroneously thinks that he/she has the righteous private law or other authorisation:

- the agent intervenes on the ground of an invalid agency contract, or
- the agency contract is valid, but the agent exceeds the its scope.

2. The principles of negotiorum gestio shall subsidiary apply to the legal position of the followings:

- the wrongful possessor [Section 5:9 § 3],
- the depositary if the depositor refuses to receive the deposited thing [Section 6:364 § 6],
- the ones who are entitled to withdraw performance [Section 6:139 § 3],
- the obligor in delay of acceptance who shall bound the thing [Section 6:156 § 3].

3. The subjects of the private law relationship of negotiorum gestio are as follows:

- the one acting in a matter on behalf of another with no authorisation is called unauthorised agent or otherwise negotiorum gestor.
- the other in whose favour and by the interest and probable intent of whom the negotiorum gestor has intervened is called the “master of the matter” otherwise dominus negotii.

4. The classification of the intervention to appropriate and inappropriate intervention decides the legal standing i.e. the rights and obligations of the unauthorised agent and that of the master of the matter. Therefore, the decisive matter is not the success but the appropriateness of the intervention. However, there are some rights and obligations of the parties, which are independent of such qualification of the intervention.

Civil Code Section 6:584 says that “Intervention in another’s matter without authority shall be considered appropriate if it is in conformity with the interest and presumed intent of the master of the matter, especially if it saves him/her from damage, loss or injury of any kind.” In some cases, intervention is qualified to appropriate even it was done against the will of the master of the matter, viz.:

- in order to avert life threatening against the will of the person whose life is endangered,
- to prevent or avert extensive potential hazards against the will of the owner,
- to fulfil the obligation of maintenance against the will of the one who is obliged to perform such service.

5. The obligations of the unauthorised agent are as follows:

- obliged to handle the matter as required by the interest and probable intent of the master’s master,
- obliged to immediately inform the master of the matter about the intervention or its necessity,
- otherwise, negotiorum gestor is subject to the same obligations as an agent (cf. Sections 6:273sqq);
– if the intervention was *appropriate* but *at the same it caused damages*, the negotiorum gestor is *liable for these damages* according to the *rules of the general non-contractual* (i.e. delictual) liability for damages, therefore, the liability can be excused if the agent proves that he/she has acted as it was *generally expectable in that given situation*;

– if the intervention was *inappropriate*, the unauthorized agent is *liable for all damages that would not have occurred without this intervention*.

6. The *appropriateness* of the intervention *decisively define* the rights of the unauthorised agent:

– if the intervention was *appropriate*, the unauthorised agent is *entitled to the rights of an agent*, irrespective of the *successfulness of the intervention*:
  *is entitled to demand remuneration*, which is *due* at the time of the agency’s ending;
  *for securing the claims for expenses and remuneration*, he/she becomes to be *entitled to statutory lien on the assets of the master of the matter that comes into his/her possession in consequence of the intervention*;

– if the intervention was *inappropriate*, the unauthorised agent:
  *is not entitled to demand remuneration*;
  *is entitled only to demand reimbursement for his/her expenses only in accordance with the regulations governing unjust enrichment* (if the intervention has produced no enrichment of the master of the matter, the unauthorised agent can get no reimbursement!).

4. Implicit Conduct

1. This institution is similarly as the *promissory estoppel* of the *Anglo-Saxon legal systems*. Our Civil Code says (6:587): “The court *may impose* the person *on paying the damages in full or in part* whose intended conduct has induced by sufficient reasons and grounds another person of good faith to act in a manner that has brought harm to this person through no fault of his own.” Therefore, there are *six cumulative conditions* to be fulfilled:

   – the one party’s intended conduct,
   – the other party of good faith,
   – the explicitness or sufficiency of the inducement’s reasons,
   – the other party’s acting was induced by the one party’s conduct,
   – the other party’s harm was caused by his/her own conduct,
   – which conduct was caused through no fault of his/her own.

2. The one party’s conduct is specific since it is *neither lawful nor unlawful* but it is *disorderly and anomalous*. This *disorder* is the *legal basis* for establishing an obligation but not a liability for damages. This rule is the *fine correction* of the *general principle* that persons are obliged to bear the results of their own conducts. The fact that implicit conducts erect obligation *motivates for more precautiousness* in the own conducts, therefore this law serves property and market safety.

3. The disposition of the norm is pretty peculiar as well, since the Civil Code gives full discretion to the courts for deciding whether *imposing or not imposing* the one party on paying the damages at all, and whether *imposing the one party on paying the damages totally or only partially*, viz.: “The court *may impose on paying the damages in full or in part*”. This is a discretion of *wide extent*, and the reason for that lies in the principle that persons are obliged to bear the results of their own conducts, and this obligation can be outsourced only in very exceptional cases.
1. **FUNDAMENTAL DEFINITIONS**

1. *Definition of succession and heir; ipso iure succession*. Succession in general refers to those legal changes when all or certain rights and/or obligations of a subject of law vest in another subject (singular or universal succession). Succession in Law of Succession covers those situations where the estate of a person devolves upon an heir in its entirety after the testator’s death. In this term succession means universal succession, only. Consequently, heir is legal successor who inherits rights and obligations, too: the estate of the testator vest in him/her as whole. The death of the testator itself results the succession (ipso iure succession) without any additional requirements (e.g. acceptance of the inheritance). The right to inheritance shall not lapse.

2. *Inheritable Estate*. The testator in his/her life was subject of several types of rights and obligations among which not all but those rights and obligations constitute the inheritance, only which belongs to the scope of civil law and in which the law provides the opportunity of succession [e.g. Beneficial Interest (otherwise known as Usufruct) or Use Right, right for maintenance ends with the death of the right holder, restitution for the violation of personality is a personal, not inheritable right of the violated person]. Debts raised in the base of Tax Law are also out of the scope of inheritable estates although in the base of Tax Law usually the heir shall be liable for bearing those.

3. *Legal Titles of Succession*: Will, Intestate Succession. Succession may take place by will or by the rules of intestate succession. Should the testator leave a valid testamentary disposition (will, agreements as to succession, testamentary gift) the way of succession shall follow the intent of the testator. Intestate succession shall prevail in lack of or in case of invalidity or annulment of testamentary disposition or concerning those estates that are not mentioned in the testamentary disposition.

In the Civil Code—near the general rules of intestate succession—there are worldwide unique, special provisions on lineal succession which are applicable if the legal heir is not a descendant of the decedent, and the inheritance involves property that has come down to the decedent from an ancestor by inheritance or gift.

4. *The Scope of Heirs in General; Inheritableness. Conditions of Succession*. All entities having legal capacity may be heirs by testamentary disposition of the testator. The scope of intestate heirs is restricted: they
can come out of the relatives, the bereaved, only and in lack of any other intestate heirs the State shall be the necessary legal successor. The State, as a legal heir, shall not be entitled to disclaim an inheritance. It is only one of the issues who can be heir in general. There is another substantive issue as well whether the heir having legal capacity and belonging to the scope of intestate heirs can inherit the specific estate of the specific decedent. This capacity is the inheritableness of the persons which depends on the circumstances prescribed by the law. Lack of inheritableness occurs when the heir is debarred from succession [Section 7:4] or other legal limitations preclude the heir acquiring the estate of the testator (e.g. limitation or exclusion of inheriting soil).

It is only one of the issues who can be heir in general. There is another substantive issue as well whether the heir having legal capacity and belonging to the scope of intestate heirs can inherit the specific estate of the specific decedent. This capacity is the inheritableness of the persons which depends on the circumstances prescribed by the law. Lack of inheritableness occurs when the heir is debarred from succession [Section 7:4] or other legal limitations preclude the heir acquiring the estate of the testator (e.g. limitation or exclusion of inheriting soil).

Summing up of the above-mentioned statements the necessary conditions of succession are as follows: death of the testator; inheritable estates; heir having inheritableness

5. Debarment from Succession. Causes of debarment are fully listed by the Code. The detailed provisions of the specific causes can be found in different parts of Law of Succession. A person shall be debarred from succession under the following circumstances:

- if the person did not survive the testator
- if the person is undeserved of the inheritance (unworthiness);
- if he has been excluded from the inheritance or disinherited by the decedent;
- if he has waived his/her right to the inheritance;
- if he has disclaimed the inheritance.

Persons who died in the same accident or in any similar incident shall be considered debarred in terms of consecutive succession irrespective of the time of their death. Unworthiness is more than a moral judgement since it covers very serious behaviours like attempting to take the decedent’s life or the life of the legal heir with the intention of receiving a part of the inheritance [Section 7:6]. In terms of waiver of succession any legal heir shall be entitled to renounce his right to succession—in whole or in part—in a written agreement concluded with the testator. The personal effects and the scope of waiver is up to the intent of the parties. In lack of their expressed declarations the Code provides the rules concerning these two issues [Sections 7:8–9]. Detailed rules of exclusion can be found in the rules of succession by will [Section 7:29]. Disinheritance is regulated among the provisions of compulsory share [Section 7:77–79], while disclaimer of inheritance belongs to the rules of acquisition of inheritance [Section 7:89-90]. The point of every debarment rules is that the person involved shall be fully or partly disregarded from the point of view of succession.

2. Succession by Testamentary Disposition
   (Will and Agreement As To Succession)

2.1. Freedom of Testamentary Disposition; Limits of Freedom

During the period of feudalism testator’s freedom as to dispose of his/her property was strictly restricted. As a result of the civil revolutions the bourgeois civil law entitled the civilians to freely dispose of their property not only in their life but at time of death by their will. Disposition may concern either the full or a certain part of the property. Nevertheless, specific provisions of the law limit this freedom by way of the rules of validity of the wills and by providing compulsory share for certain heirs even if the testator did not want to dispose in favour of them.

2.2. Types of Testamentary Dispositions

As an overall category testamentary disposition may mean wills, agreements as to succession—which influence the course of succession by way of nominating the heir or excluding, disinheriting specific persons or picking up certain objects from the property because of providing device for a beneficiary—and testamentary gifts. The latter influences the inheritable estate since the gift will not be the part of it provided the person who receives the gift outlives the donor.

Substantive features of (written) wills are as follows:
- contains the testator's disposition of his/her property to take effect after his death, and
it manifestly appears to have been made out by the testator. Having these characteristics, the instrument shall be deemed as existing will but for the validity of that it shall comply with other conditions as well.

2.3. Types and Basic Rules of Wills

Law of Succession recognizes the following types of wills: private (personally drafted) wills in written or oral (nuncupative) form, and notarial wills drafted before a notary public. Written private wills can be either a so-called holographic (written from beginning to end by handwriting of the testator employing normal writing) or an allograph (written at least partly or whole by somebody else).

For the validity of holographic wills there is no need for witnesses. Allograph wills are valid only if two witnesses—complying with the relevant legal requirements—attest that the testator identified by them subscribed the testament in the contemporaneous presence of them or, if it was signed previously, the testator declares the signature to be his/her own before two witnesses in their contemporaneous presence, and if the will is also signed in both cases by the witnesses, indicating their capacity as such. A will can be validly made only in a language that the testator understands, and that he is able to write if written by the testator in his/her own handwriting, or that he is able to read if written by others. Allograph wills need continuous numbering and signatures of the testator and the witnesses in every separate pages if the will consist of several separate pages.

Both types of wills can be deposited with a notary public and if it is made personally there is no need for witnesses even if the will is allograph. The written wills shall be considered valid from a formal point of view if the date when it was drafted is clearly indicated. Nuncupative wills are exceptional. Those can be made by persons who are in an extraordinary life-threatening situation where making a written will is not within their reach. A notarial will drafted before a notary public shall comply with the formal validity requirements of notarial deeds. Any expression of testamentary disposition requires personally made legal statements of the testator. There is no room for representation. Any will—with exception of spouses—which contains the testamentary disposition of more than one person (joint will) shall be invalid.

2.4. Capacity of Expressing Testamentary Dispositions

Expressing testamentary dispositions in form of wills, agreements as to succession or testamentary gifts requires the legal competency of the testator for making valid legal statements in case of his/her death, that is to say, testamentary capacity. Persons of full age usually have this capacity (in lack of limitations or preclusions by the law or by a court ruling on guardianship) end they can make valid testamentary dispositions. Even if the person has this capacity the testamentary disposition of blind or illiterate persons, or persons who are incapable of reading or subscribing their names shall be considered valid only if made in writing in the form of a notarial will. The testamentary disposition of a minor of limited legal capacity or a person whose legal capacity has been partially limited in respect of making legal statements relating to property shall be considered valid only if made in the form of a notarial will. The consent of their legal representatives, or the approval of the guardian authority shall not be required for the wills of such persons to be valid. Nevertheless, for validity of a contract of inheritance and testamentary gifts this consent, or approval is necessary.

2.5. Contents of Wills

Coming from the substantive features of wills the only compulsory requirement as to the content of the will the testator's disposition of his/her property to take effect after his/her death. It does not mean that the testator shall nominate heir in any case although it is typical part of the wills. Excluding or disinheriting somebody itself can be enough for complying with this condition. It is also up to the testators what part of the estate or which objects from the property he is going to assign to the heir. In case of doubt the ratio of several heirs shall be equal. Nominating heir shall be originated directly from the testator. Nobody else can be authorized to make it instead of him. Near the heir the testator may nominate alternate heir who will substitute the heir in case of debarment of the originally nominated person. Nominating so-called
substitute heir is generally invalid. Substitute heir is such a person who would follow in succession the prior heir such a way that the prior heir acquires the property and in case of some event or a date, the substitute heir will replace the previous heir in respect of the inheritance or a part thereof. Together with nomination of heir other typical part of the will are specific (in rem) or obligatory legacy when the testator directly assigns a property to a specific person without nominating him as heir or obliges the heir to fulfil a property obligation at the expense of his/her share in favour of the named person. Testator may put conditions in the will but any condition that is manifestly in contradiction to good morals, unintelligible, impossible, or contradictory shall be invalid.

2.6. Invalidity and Annulment of Wills

1. Characteristics of Invalidity and Annulment. Invalidity and annulment of wills is conditional even if there are reasons and circumstances which—according to the Code—shall lead to invalidity or annulment. Without a legal statement (contest) of an entitled person neither the notary public nor the court may take account of the circumstance available for causing invalidity or annulment. A contest may be filed by a person who, as the result of invalidity or annulment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the testamentary disposition. As a result of Act CXXII of 2013—on Transactions in Agricultural and Forestry Land succession of soil is restricted and all testamentary dispositions which would result prohibited succession of the soil shall be deemed void even if there were no any contest. Notary public and the court shall take account of this invalidity ex officio.

The right to inheritance shall not lapse, an intestate or nominated heir may claim his/her inheritance against an intestate heir without any time limitation but the right of contest shall lapse after five years from the time of the opening of the succession. Neither an intestate nor other heir nominated in a will may file successful contest when the term of limitation expired. This is a substantive theoretical and doctrinal difference between invalidity and annulment that the cause of invalidity shall appear at the time of the raise of the will while causes of annulment appear following the coming into existence of it.

2. Causes of Invalidity. There are several provisions in the Code establishing different causes of invalidity which we can sort as follows and just illustrate by mentioning some examples.

- lack or limitation of legal capacity of testator (e.g. will of minor under the age of fourteen or between fourteen and eighteen but made in form of private will)
- defects of the intent of the testator (e.g. the testator was mistaken concerning the content of his/her statements or did not want to make a statement of such content at all)
- mistake in expression of testamentary intent (e.g. holograph will without witnesses, oral will without the necessary conditions, joint will)
- invalid content (nominating substitute heir, when it is not allowed, assignment to the witness of the will or the notary public who drafted the will)

3. General and Special Causes of Annulment. Annulment means that an otherwise valid will is not available for giving rise to the target of the will because of a later appeared circumstance. There are general or special circumstances of this nature, depending on the type of will.

4. General cause of annulment is revocation of the will by the testator according to the rules governing the making of the will. Revocation is also a testamentary disposition which refers to the intent of the testator who changed his/her mind comparing with his/her earlier will. Revocation can happen by way of expressed declaration or by way of drafting new will. Those parts of the previous will which are not in contradiction with that of the new one shall remain in force.

5. Special rules govern the annulment of holographic wills, joint wills, wills deposited with notary public and nuncupative wills. A holographic will shall become inoperative either the testator, having testamentary capacity, or another person with his/her consent destroyed it. If a holographic will has remained in the testator's possession but has not been found, it shall, until proven to the contrary, be presumed that the testator has destroyed it. Neither a public nor a holographic will shall cease to have effect if the document containing the will is destroyed for reasons beyond the control of the testator or if it cannot be found, except if the testator acquiesces to destruction. The joint will of spouses shall become inoperative

- if their matrimonial relationship ceases after making the will, and it is not reconciled before the
time of the opening of the succession,
- if one or both testators have a child born after the will is made, except if the will provides otherwise.

A personal will deposited with a notary public shall become inoperative if it is withdrawn by the testator. A nuncupative will shall become inoperative if the testator had the opportunity to draft a written will without any difficulty during a period of thirty consecutive days following the cessation of the situation underlying the making of the nuncupative will.

6. Partial Invalidity and Partial Annulment of Wills. Some causes necessarily result the invalidity or annulment of the entire will (e.g. lack of legal capacity or will destroyed by the testator). On the base of other causes either invalidity or annulment can be partial, only (nominating substitute heir in a prohibited way or drafting a partly different new will without revoking the previous one). If any disposition from among the several dispositions of a will is invalid or inoperative, the other dispositions shall remain valid or effective. If the testator provides otherwise or the continuance of certain parts of the will is in contradiction to the presumed intent of the testator, the entire will shall be invalid or null.

2.7. Agreements As To Succession

1. Legal Nature of the Agreement. Agreements of these type are on the one hand testamentary dispositions from the point of view of the testator on the other hand contracts conveying mutual services having property value. Service of the testator shall be nomination of the other party as his/her heir of his/her entire estate or a specific part thereof, or in respect of certain property. Services to be provided by the person nominated as heir to the testator him/herself—or to a third person specified in the agreement—shall be maintenance, annuity or care. While the testator shall have the right to make any testamentary disposition in the agreement as to succession (e.g. nomination of others to heir in respect of other parts of his/her property, exclusion or disinheritance of other potential heirs), these type of dispositions of the other party shall be invalid since it would come up against the prohibition of joint will.

2. Validity of the Agreement. The provisions on private wills shall apply to the validity of these agreements with exception that the formal requirements of wills written by other persons shall apply to such agreements even if they are drafted in the handwriting of one of the parties. The consent of the legal representatives or the approval of the guardian authority shall be required for their agreement as to succession to be valid if the testamentary capacity of him/her is limited (a minor of limited legal capacity or a person whose legal capacity has been partially limited in respect of making legal statements relating to property).

3. INTESTATE SUCCESSION

3.1. General Way of Intestate Succession

1. Scope of Intestate Heirs in General. In practice the most frequent way of succession is intestate succession which prevails when there is no testamentary disposition, or it is partly or entirely invalid or null or the valid and effective testamentary disposition does not concern all the property of the testator. Rules of intestate succession prefers those persons who are in cousinly or matrimonial/registered partnership relation with the deceased. In lack of any of them finally the State shall be the intestate heir. Among the intestate heirs, the law sets up order, and the heirs in this row follow each other in inheritance in case of debarment of the heir next in line. Cousinly relation is basically a consanguinity relationship (lineal or collateral) but adoption also establishes cousinly relationship from legal point of view even if there is no ill and blood between the adopted person and the adoptive parents. Matrimonial and registered partnership relations shall be validly established and at the time of the death of the deceased still existing real connection between the parties. The spouse/surviving partner shall be debarred from intestate succession if they were separated at the time of the death of deceased and it is manifestly evident from the circumstances that there was no reasonable expectation of reconciliation.

2. Inheritance by Descendants. The child of a decedent shall be the primary legal heir. Two or more children shall succeed in equal shares. In the place of a child or a more distant descendant debarred from
succession, the children of a debarred person shall succeed in equal shares. If several descendants succeed together, the purpose of the law is to provide equal shares to descendants being on same level of succession. It can happen that the decedent assigned estates as a gift for certain descendants which estates are not the part of the inheritance anymore therefore one or more descendants could get more than others taking account the earlier gifts if the inheritance will be divided in equal shares. To avoid this “injustice” each heir shall add to the value of the estate the value of advancements they received from the decedent during his lifetime

- if the decedent expressly stipulated such advancements to be included in the heir’s share of the estate or
- the circumstances suggest that the bequest was made under the obligation of inclusion.

Restoring previous gifts (advancements) this way the cumulated value shall be divided among the heirs according to the order of intestate succession and the value of such advancements restored by each heir shall be deducted. From the existing estates the heir who earlier received advancement shall be entitled for the difference, only. If the heir received more advancements, than his/her calculated share he/she shall be considered satisfied from the inheritance to be divided, but he/she shall not be compelled to refund any excess. Applying these rules neither heir shall give or refund any value to any other heirs since restoring this gift means calculation, only, in the interest of determining how the existing estates shall be divided among the descendants. Should the calculated share be smaller than the compulsory share of the heir these rules are not available for managing this issue, but the rules of compulsory share shall be applied.

3. Status of the Spouse in Intestate Inheritance. The spouse of the decedent shall be taken into account in three ways: descendants and spouse inherit simultaneously, spouse and parent(s) of the decedent inherit simultaneously, just the spouse inherits.

a) Inheritance by Spouse and Descendants Simultaneously. When descendants and the spouse of the decedent as well survived the decedent all of them shall be intestate heirs, but the way and object of their inheritance differs. The estate remaining after the decedent shall be divided into two groups:

- family dwelling used by the spouse together with the testator, including furnishings and appliances will be the property of the descendants according to their legal shares encumbered by the life estate (usufructus for life) of the spouse,
- all other objects of the estate which shall be divided among the descendants and the spouse such a way like the spouse would be the child of the decedent.

In the latter case calculating with two children and with the spouse the mentioned part of estate will be the property of them in equal (1/3-1/3) ratio. Instead of a child share, the spouse may be granted estate for life in respect of the entire estate as a result of the agreement of heirs. Life estate shall provide the accustomed residential circumstances for spouse following the death of the decedent therefore there is no room for limitation or redemption by request of descendants. Spouse itself shall be entitled for claiming redemption of life estate as a result of which instead of life estate he/she will receive one child share—in kind or in money—from the estate to be redeemed.

b) Inheritance by Spouse and Parent(s) of Decedent Simultaneously. Here again the estate remaining after the decedent shall be divided into two groups. Provided that:

- there is no descendant, or
- if the descendant debarred from succession and
- spouse and parent(s) of the decedent also survived the decedent’s spouse shall inherit the family dwelling used together with the decedent, including furnishings and appliances.

Half of all other estates shall be inherited by the decedent’s spouse. The other half shall be inherited by the decedent’s parents in equal shares. If a parent is debarred from succession, the other parent and the decedent’s spouse shall succeed in equal shares. Concerning those objects of estate, the origin of which is lineal the rules of linear succession shall be applied.

c) Inheritance by Spouse Alone. If there is no descendant or parent, or if they are excluded from succession, the surviving spouse shall receive the entire estate. Concerning those objects of estate, the origin of which is lineal the rules of linear succession shall be applied.

4. Inheritance of Lineage and Their Descendants (Collaterals). If neither descendants nor spouse of the
decedent inherit, succession will take place among the lineage and collateral heirs. Parents, grandparents, 
great-grandparents and their descendants consecutively shall be heirs.

The parents of the decedent shall succeed in equal shares. In the place of a parent debarred from 
succession, the descendants of such parent shall succeed in the same manner, in which descendants of a 
child succeed in the stead of the child. If a parent debarred from succession has no descendant, or if the 
descendant is excluded from succession, the other parent alone or his descendants shall succeed.

The grandparents of the decedent shall become legal heirs in equal shares if there are no descendants, 
spouse, parents, or descendants of parents, or if they are excluded from succession. In the place of a 
grandparent debarred from succession, the descendants of such grandparent shall succeed in the same 
manner as the descendants of the parent succeed in the stead of that parent.

The great-grandparents of the decedent shall become legal heirs in equal shares if there are no 
grandparents and descendants of grandparents, or if they are excluded from succession. In the place of a 
great-grandparent debarred from succession, the descendants of such great-grandparent shall succeed in the same 
manner as the descendants of the grandparent succeed in the stead of that grandparent. A little bit simplifying the complicated and detailed rules we can summarize the additional 
rules shortly as follows: if the debarred grandparents, great-grandparents have no descendants the other 
grandparent or great-grandparent shall succeed.

5. Inheritance by Distant Relatives. If neither the great-grandparents, nor their descendants inherit the 
distant relatives shall be the heirs, only in equal shares. Their descendants may not be heirs in case of 
debarment of the distant relatives.

3.2. Special Way of Intestate Succession: Lineal Succession

Lineal succession is a special Hungarian legal institution the purpose of which is to avoid such 
succession when a property originated from lineage would be inherited by heir(s) out of the relatives of 
the decedent (e.g. spouse and later his/her relatives could inherit the property which the decedent 
inherited or received as a gift from his/her father, mother, grandfather, grandmother…). Instead of 
general rules of intestate succession the rules of lineal succession shall prevail, if

- the legal heir is not a descendant of the decedent,
- there is lineal property in the estate,
- there is such heir who is entitled to inherit the lineal property.

As general rule applies, any property that has come down to the decedent from an ancestor by 
inheritance or gift shall be deemed as lineal property. A parent shall succeed to property that has come 
down to the decedent from him/her or one of his/her ancestors. Descendants of a debarred parent shall 
succeed in his/her place according to the general provisions on intestate succession. If the parent who 
is entitled to succeed to a lineal property and the parental descendant are both debarred, the grandparent, 
and if the grandparent is also debarred, a more distant ancestor of the decedent shall inherit the property 
that has come down to the decedent from him/her or from one of his ancestors. The spouses shall be 
etitled to life estate on lineal property which life estate can be subject of redemption. If there is no 
lineal heir, lineal property shall be treated the same as the decedent’s other property.

3.3. Succession of the State (Escheat)

In the absence of other legal heirs, the estate shall revert to the State which shall not be entitled to 
disclaim an inheritance.

4. COMPULSORY SHARE OF INHERITANCE

1. Legal Nature of Compulsory Share. Hungarian Law of Succession provides compulsory share to 
descendants, spouse, and parents of a testator if such person is a legal heir of the testator or would be one in 
the absence of a testamentary disposition at the time of the death of decedent and they could not receive 
anything from the estate or their acquired share from estate does not reach the legally provide extent of
their compulsory share. This situation may appear if the testator nominated other person(s) as heir or because of gifts the estate is not enough for the purposes of compulsory share. Should the compulsory share suffer injury the entitled person shall have the right for his share as a creditor of the estate (not in rem but obligatory claim the period of limitation of that shall be five years). Compulsory share usually is due in money (in certain exceptional cases in kind) without any limitation or encumbrance.

2. **Debarment from Compulsory Share: Disinheritance.** A person entitled to a compulsory share can be divested from this share by way of disinheritance, only, which requires the express disposition of the testator in a valid and effective testamentary disposition expressly indicating the legally accepted reason of that. Such grounds for disinheritance can be found in Section 7:78 of the Code (e.g. person has committed a crime to the injury of the testator or has seriously violated his legal obligation to support the testator or lives by immoral standards).

3. **Extent of Compulsory Share of Inheritance.** For determining the due value of compulsory share, a complicated calculation shall be made the first step of which is to determine the basis of this share. The basis involves two elements: the net value of an estate, and the net value, at the time of advancement, of the advancement granted by the testator inter vivos. Having the amount of these two elements, we can calculate the extent of compulsory share. The person entitled to a compulsory share shall be entitled to one third of what is due to a legal heir as calculated in the base of the compulsory share. If the spouse as intestate heir would be entitled for life estate his/her compulsory share shall be a limited extent of life estate that provides for his/her needs, in consideration of the property he/she has inherited.

4. **Responsibility for Satisfaction of a Compulsory Share.** There are two groups of persons responsible for compulsory share: persons having a share of the estate, and persons receiving advancements from a testator within ten years prior to his death. Responsibility for satisfaction of a compulsory share primarily falls on persons having a share of the estate while others shall be responsible for that part of the compulsory share that cannot be satisfied from the estate, irrespective of the chronological order in which the advancements were received.

5. **LEGAL EFFECTS OF SUCCESSION**

1. **Acquisition of Inheritance.** Succession shall open upon the death of the testator when the heir shall acquire an estate, or his/her rightful share or certain objects from an estate, without acceptance or other legal act (ipso iure succession). If the heir does not want his share from the estate, he/she shall be entitled to disclaim an inheritance after the time of the opening of the succession. Disclaimer shall affect the entire share of the heir but in certain cases there is room for separately disclaim the inheritance of a farmland.

2. **Legal Status of Heirs.** Should there be two or more heirs they shall be jointly entitled to the property of an estate before the division of the succession. The general provisions of co-ownership shall apply to the community of them which community shall cease upon the division of the succession. Their responsibility for estate debts shall be joint and several but limited liability.

3. **Estate Debts and Their Satisfaction.** **Responsibility for Estate Debts.** Estate debts are entirely listed by the Code as follows:

   - costs of a proper burial for the testator;
   - applicable costs of acquiring, securing, and handling an estate (hereinafter referred to as „estate costs”), as well as the costs of probate proceedings;
   - the testator's debts;
   - obligations based on the compulsory share;
   - liabilities based on legacies and devises.

This specification is substantive because of two viewpoints:

   - these and only these debts shall be qualified as estate debts
   - the specification determines the rank of the debts which rank shall be followed in course of satisfying the debts.

Heirs shall be responsible to creditors for estate debts. Their responsibility is limited by two ways.

   - At first, they shall be liable with the objects and proceeds of the estate (cum viribus liability).
If the objects or proceeds of an estate are not in the heir’s possession at the time the claims are enforced, the heir’s other property shall also be appropriated up to the value of their inheritance to cover the claims (pro viribus liability).

Not only heirs but the legatee who has received satisfaction at the expense of another estate creditor shall be liable to that creditor if the creditor has not been able to obtain satisfaction from the heir. Liability of the legatee shall be in accordance with the regulations governing unjust enrichment.
Benke, József

A SELECTED FOREIGN LANGUAGE BIBLIOGRAPHY ON HUNGARIAN PRIVATE LAW QUESTIONS


Jaritz, Gerhard / Szende, Katalin (eds.): Medieval East Central Europe in a Comparative Perspective: From
Frontier Zones to Lands in Focus, Oxford et al., Routledge, 2016.


Vekás, Lajos / Paschke, Marian (Eds.): Europäisches Recht im ungarischen Privat- und Wirtschaftsrecht, Münster, LIT Verlag, 2004.


DETAILED TABLE OF CONTENTS

BENKE, JÓZSEF: THE GENERAL PART OF HUNGARIAN PRIVATE LAW (HISTORICAL AND DOCTRINAL FOUNDATIONS)

1. A CONCISE HISTORY OF HUNGARIAN PRIVATE LAW AND JURISPRUDENCE
   1.1. The History of Hungarian Private Law until its Codifications
   1.2. The Process of Hungarian Private Law Codification
   1.3. A Concise History of Hungarian Private Law Jurisprudence

2. BASIC DOCTRINES OF HUNGARIAN PRIVATE LAW
   2.1. The Concept of ‘Private Law’ and ‘Civil Law’
   2.2. The Sources of Private Law
   2.3. The Doctrine of Private Law Norms
   2.4. The Theory of Private Law Jurisdiction and Norm Application
   2.5. The Doctrine of Private Law Relationships

NOCHTA, TIBOR: FUNDAMENTALS OF THE LAW OF PERSONS

1. GENERAL RULES OF LEGAL PERSONS
2. THE RULES OF PARTICULAR LEGAL PERSONS
   2.1. The Common Rules of Business Associations
   2.2. Specific Business Associations
   2.3. Cooperative Societies
   2.4. Groupings
   2.5. Associations
   2.6. Foundation
   2.7. State Involvement in Civil Relations

BENKE, JÓZSEF: FUNDAMENTALS OF LAW OF RIGHTS IN REM

1. GENERAL PART
   1.1. The Doctrine of Norms of the ‘Law of Rights In Rem’
      1.1.1. Origin and Characteristics of Basic Notions and Concepts
      1.1.2. Principles and Regulatory Structure
   1.2. The Doctrine of In Rem Legal Relationships
      1.2.1. The Content Thereof and the Genre of Rights in Rem
      1.2.2. The Objects Thereof, the Estate, and the Assets
      1.2.3. The Subjects Thereof

2. SPECIAL PART
   2.1. The Law of Possession
      2.1.1. Basic Notions Thereof
      2.1.2. Acquisition and Loss of Possession
      2.1.3. Protection of Possession
      2.1.4. Wrongful Possession
   2.2. The Law of Ownership Rights
      2.2.1. Basic Notions Thereof
      2.2.2. The Content of Ownership
         2.2.2.1. The Right to Possess, Use, Utilise and Fructify, and the Restrictions Thereof
         2.2.2.2. The Right of Disposition and its Restrictions
         2.2.3. The Protection of Ownership
         2.2.4. The Different Modes of Ownership Acquisition
            2.2.4.1. The Original Modes Thereof
            2.2.4.2. The Derivative Modes Thereof
         2.2.5. The Joint Ownership and the Condominium
            2.2.5.1. Joint Ownership and Legal Relationships of Joint Owners
            2.2.5.2. The Condominium
   2.3. The Law of Limited Rights In Rem
      2.3.1. The Law of In Rem Security Rights over Assets
2.3.1.1. The Legal Nature Thereof

2.3.1.2. Collateral and Independent Types Thereof

2.3.1.3. The Process of Formation Thereof

2.3.1.4. Contracts on Establishing an In Rem Security Right

2.3.1.5. Parties’ Rights and Obligations before Satisfaction

2.3.1.6. The Claims Guaranteed Thereby

2.3.1.7. The Objects Thereof

2.3.1.8. The Rankings Thereof According to Registration

2.3.1.9. The Enforcement Thereof: Exercising the Right to Satisfaction

2.3.1.10. The Termination Thereof

2.3.2. The Law of Rights of Use

2.3.2.1. Diverse Types of Beneficial Interests (Usufructs)

2.3.2.2. Land Easements (Predial Servitudes)

2.3.2.3. Other Rights of Use

2.4. The Law of Public Registers of Rights In Rem

2.4.1. The Collateral Register

CHAPTERS FROM THE LAW OF OBLIGATIONS

I. BENKE, JÖZSEF: BASIC ISSUES OF OBLIGATION AND LAW OF OBLIGATIONS

1. Notion, Characteristics, Functions

2. Origins and Development of Obligations and Contracts

3. The Sources of Obligations

4. The New Hungarian Law of Obligations

II. MOHAI, MÁTÉ: SETTLEMENT OF THE OBLIGATION

1. General Regulations

2. Settlement of Monetary Debts

3. Compensation

4. Court and Notarial Deposit

5. Settlement by a Third Person

III. FABÓ, TIBOR: THE FORMATION OF CONTRACTS

1. Basic Issues

2. Concluding Contracts: Offer, Binding Period, Acceptance

3. Methods of Concluding Contracts

IV. BÉRCESEI, ZOLTÁN—HARCI-KOVÁCS, KOLOS: INVALIDITY OF THE CONTRACTS (ABSOLUTE AND RELATIVE NULLITY)

1. The concept and types of nullity

2. Grounds for Invalidity

3. The Legal Consequences of Invalidity

V. BENKE, JÖZSEF: INEFFECTIVENESS OF CONTRACTS

1. Species and Legal Consequences of Ineffectiveness

1.1. Absolute Ineffectiveness

1.2. Relative Ineffectiveness

1.3. Legal Consequences of Ineffectiveness

2. Conditions, Terms; Pending Conditions

3. Contracts Subject to A Third Party’s Consent or an Authority’s Approval

4. Fraudulent Contracts and “Paulian Action”

VI. MOHAI, MÁTÉ: PERFORMANCE OF CONTRACT

1. General provisions

2. Specific cases of performance

VII. NOCHTA, TIBOR: BREACH OF CONTRACT

1. Essence, Legal Consequences and General Provisions
Relating to Breach of Contract

2. The Different Types of Breach of Contract

VIII. Fabó, Tibor: CONFIRMATION OF CONTRACT
1. Confirmation of Contract in General
2. The Earnest Money
3. The Contractual Penalty
4. The Forfeiture Clause

IX. Fabó, Tibor: CONTRACTS TRANSFERRING OWNERSHIP RIGHTS
1. The Contracts Transferring Ownership Rights in the Civil Code
2. Basic Rules of Rights In Rem; Certain Aspects of Law of Obligation
3. The General Rules of the Sales Contracts
4. The Special Modes of Sale
5. Sub-Types of the Sales Contracts
6. Exchange Contracts
7. Contracts of Gift

X. Nochta, Tibor: CONTRACTS FOR PROFESSIONAL SERVICES
1. Common Rules
2. Sub-Types of the Contract for Professional Services

XI. Fabó, Tibor: CONTRACTS OF CARRIAGE
1. Legal Regulation of Carriers’ Activities
2. Legal Definition, Characteristics, and the Conclusion of Contracts of Carriage
3. Parties’ Legal Statuses within the Contractual Obligation

XII. Bércesi, Zoltán—Harcó-Kovács, Kólos: ENGAGEMENT-TYPE CONTRACTS
1. Engagement-Type Contracts in General
2. Personal Service Contract
3. Consignment Contract
4. Agency Contracts
5. Shipping Contracts
6. Fiduciary Asset Management Contracts

XIII. Benke, József: LICENSING CONTRACTS
1. Common Peculiarities and Rules of Licensing Contracts
2. Lease Contracts
3. Leasehold Contracts
4. Gratuitous Lending Contract

XIV. Mohai, Máté: DEPOSIT CONTRACTS
1. General Provisions of the Deposit Contracts
2. The Collective and the Exceptional Deposit Contract
3. The Hotel Deposit Contract

XV. Benke, József: CREDIT AND ACCOUNT CONTRACTS
1. General Part
2. Framework Rules of the Contracts Nominated
   2.1. Fundamentals of Credit and Loan Contracts
   2.2. Deposit Account Contracts
   2.3. Current Account Contracts
   2.4. Other Nominate Credit and Account Contracts

XVI. Bércesi, Zoltán: GUARANTEE AGREEMENTS
1. Guarantee Agreements in General
2. Contract of Suretyship
3. Guarantee Contracts

XVII. Nochta, Tibor: INSURANCE CONTRACTS
1. The Basic Concept and Status of Insurance Contracts in Private Law
2. The Individual Insurance Contracts
XVIII. BENKE, JÓZSEF: CONTRACTS FOR MAINTENANCE AND LIFE-ANNUITY

XIX. FABÓ, TIBOR: CIVIL LAW PARTNERSHIP
1. Characteristics, Legal Definition, Notional Elements of Civil Law Partnerships (CLPs)
2. The Operation of CLPs: Administration and Representation
3. External Relations
4. Termination of CLP and/or Its Membership, Settlement

XX. FABÓ, TIBOR: CIVIL PARTNERSHIP
1. Recognized Couple Relations in Hungarian Law
2. Characteristics of the Civil Partnership; Establishment and Termination
3. Property relations of the civil partnership

XXI. NOCHTA, TIBOR: THE PRINCIPLES OF LAW OF TORTS
1. General Provisions and Common Rules on Liability for Damages
2. Liability for Damages (Contractual) Caused By Non-Performance
3. The Characteristics and Common Rules of Non-Contractual Liability
4. Specific Cases of Liability
   4.1. Liability for Highly Dangerous Activities: hazardous operations
   4.2. Liability for the Acts of Another
   4.3. Liability for the actions of Non-Punishable Persons
   4.4. Liability for the Actions of Public Authorities
   4.5. Product Liability
   4.6. Liability for Building Damages
   4.7. Liability for Damage Caused by Animals
5. Indemnification

XXII. BENKE, JÓZSEF: THE “OTHER” FACTS ESTABLISHING OBLIGATION
1. Facts Establishing Obligation “Other” Than Contracts, Torts, Securities etc.
2. Unjustified Enrichment
3. Negotiorum Gestio, Otherwise as Spontaneous Voluntary Agency
4. Implicit Conduct

FABÓ, TIBOR: FUNDAMENTALS OF LAW OF SUCCESSION

1. FUNDAMENTAL DEFINITIONS
2. SUCCESSION BY TESTAMENTARY DISPOSITION
   (WILL AND AGREEMENT AS TO SUCCESSION)
   2.1. Freedom of Testamentary Disposition; The Limits of Freedom
   2.2. Types of Testamentary Dispositions
   2.3. Types and Basic Rules of Wills
   2.4. Capacity of Expressing Testamentary Dispositions
   2.5. Contents of Wills
   2.6. Invalidity and Annulment of Wills
   2.7. Agreements As To Succession
3. INTESTATE SUCCESSION
   3.1. General Way of Intestate Succession
   3.2. Special Way of Intestate Succession: Lineal Succession
   3.3. Succession of the State (Escheat)
4. COMPULSORY SHARE OF INHERITANCE
5. LEGAL EFFECTS OF SUCCESSION

BENKE, JÓZSEF: A SELECTED FOREIGN LANGUAGE BIBLIOGRAPHY ON HUNGARIAN PRIVATE LAW QUESTIONS