Mg.iur. ***Edvard Pilipson,*** *doctoral student*
Riga Stradins University,
Riga, Latvia

Contractual succession subject matter and normative regulation formation proceeding temporal issues

Abstract. The article describes the process of the formation of the subject matter of the contractual succession and its legal regulation since the inception of discrete institutions which appear in inheritance law and in the law of obligations, ending the illustration with the current situation. The article illustrates the transition from universal succession, typical to inheritance law toward the singularity generated by the interaction of separate institutions, contained in inheritance law and in the law of obligations. At the same time the article displays the specific terminology required for correct legal regulation of contractual succession as a legal institution.

Key words: contractual succession, contractual succession principles, contractual succession terminology, temporal origins and development of the contractual succession regulatory framework, succession provisional acquisition.

Mg.iur., ***Edvards Pilipsons****, doktorants*
Rīgas Stradiņa Universitāte
Rīga, Latvija

Līgumiskās mantošanas priekšmeta un tā tiesiskā regulējuma temporālas formēšanas problemātika

Anotācija. Rakstā aprakstīti procesi, kas veido līgumiskās mantošanas priekšmetu un tā tiesisko regulējumu kopš mantošanas tiesību un saistību tiesību atsevišķu institūtu pirmsākumiem, beidzot analīzi ar pašreizējo situāciju. Raksts ilustrē pāreju no universālas tiesību pārņemšanas, kas raksturīgs mantošanas tiesībām, uz singularitāti, kas izveidojas sakarā ar mantošanas tiesību un saistību tiesību atsevišķu institūtu mijiedarbību. Vienlaikus rakstā tika izveidota un izanalizēta īpaša terminoloģija, kas nepieciešama, lai saprastu, atzītu un izveidotu līgumiskās mantošanas korektu tiesisko regulējumu.

Atslēgas vārdi: līgumiska mantošana, līgumiskās mantošanas principi, līgumiskās mantošanas normatīvas bāzes un specifiskās terminoloģijas formēšana, mantojuma provizoriskā iegūšana.

Mg.iur., ***Эдвард Пилипсон,*** *докторант,*
Рижский Университет им. Паула Страдиня
Рига, Латвия

Проблематика временного формирования предмета и правового регулирования договорного наследования

Аннотация. В статье изложен процесс формирования предмета и правового регулирования договорного наследования, начиная с момента зарождения отдельных институтов наследственного и обязательственного права, заканчивая современной ситуацией. Иллюстрируется переход от универсального правопреемства, свойственного наследственному праву, к сингулярности, образующейся путем взаимодействия отдельных институтов наследственного и обязательственного права. Одновременно в статье приводится специфическая терминология, необходимая для правового регулирования договорного наследования как правового института.

Ключевые слова: договорное наследование, принципы договорного наследования, провизорное приобретение наследства, формирование нормативной и терминологической базы договорного наследования.

Contractual succession origin and discrete institutions in Roman Law

It appears that the basis of contractual succession focuses on the principle «successio inter vivos» [1, 812]. In turn, the basic postulate, forming institutional framework of contractual succession is the principle, referred in legal science with the term «a provisional acquisition of inheritance» [2, 995] i.e. receiving a certain property of the person according to eventual conceivable fact, acquiring the legal status of a singular successor [3, 214]. The first institution which uses this design derived a formula «donatio mortis causa». As is known, the donation in Roman law did not exist as an independent legal transaction but was constructed in the form of transactions with effects of obligations [4, 609] concluded with the cancelling condition – donor, who suggested that due to certain circumstances, e.g. could be put to death, appointed successor de facto. However, this institution through revocable character was close and even equated to the will, thus contractual and obligation nature of the transaction was sought to uncertainty. Certainly, in terms of legal circulation it was not conducive to the stability and in the conditions of reception of this institution in Europe, this effect was partially offset by the evolution and subsequent institutionalization of this legal institution in various legal acts. The situation «donatio mortis causa» marked the beginning of the singularity of inheritance law and its contractual basis, which is quite important for the contract of inheritance origin as a contractual alienation device. Later, the situation donatio mortis causa acquired a fulfilled character within the meaning of Reinhard Zimmermann [5, 540–541] and gratuitous under understanding by Kalvis Torgans. A contract [6, 33], simultaneously grown as a result of the evolution of the essence of the obligation (D.44.7.3.pr) in relation to inheritance law in intentio mortis causa, was vested with onerous nature.

An important point of succession law, which should be analysed in relation to contractual succession is the moment of the opening of inheritance. According to the rules of ius civile the opening of the inheritance is a legal fact, which creates the right to an heir to accept the inheritance [7, 564]. In this situation, de cuius rights remain without a subject [8]. In the situation of a contractual succession rights de cuius do not remain without a subject – necessary heirs heredes sui et necessarii, included in the category assigned by the testator (appointed heirs) [9, 420] and they have preferential rights to inherit. This corresponds to the modern concept of contractual succession according to which the inheritance cannot be renounced. A similar situation in the value of the moment of opening of inheritance as the basis of an appeal in a contractual inheritance is a quite controversial question – heredes sui et necessarii were persons at the moment of death of the testator under his immediate authority. These were persons alieni juris and slaves. It was believed that these individuals were domestic heirs, and they were in a certain way already possessors of inherited property by virtue of domestic rights and analogic nature, by obligations [10, 549], as well as by prescription in the objects of ownership, and if they were properly appointed heirs, they could take the benefit and burden of inheritance. Undoubtedly, the legal evolution heredes sui et necessarii in the light of contractual succession led to the emergence of the institution of compulsory heirs, and according to the author of this research, to heir category under succession contract. In turn, the category referred to by the term «direct power" (patria potestas – Dozdev, 1996) has been transformed into a category referred to by the term "ancestral (or, sometimes, inheritance) rights and obligations". This statement needs explanation. The law, typically characterized as formal equality [11, 17], does not exist without an equilibrium which is mediated by corresponding rights and obligations. The preponderance of one category over the other does not proove the requirements of equivalence between the subjects of law. In this situation the imminent patria potestas in relation to alieni iuris, influenced by trends in private law, including the sphere of contract and inheritance law, transformed into a hereditary rights and obligations, inherent to contractual succession. According to the mentioned above, it seems, that one of the major achievements of Roman law in the genesis of contractual succession is creation of the concept, named by the term "personam sustinere" [12] (D.28,5,16).

Multiplication of the person of the testator [13, 253] and other participants in the contractual succession makes possible to carry out the desired for the contractual succession singularity and implement a plan to optimize the impact of the imperatives of the law of succession in construction as follows: optimization settlement in a situation of cross–border contractual succession, universal succession for the purpose of lawful restrictions of the debts of the hereditary mass, creation of an image and model ex ante and ex post enforcement, and prevention of a negative impact under contractual succession from factors, mediated by the concept hereditatis futurae – future inheritance [14, 77]. In addition, personam sustinere will create and implement tools for hereditary disposition legal adjustments to ensure the translocation of law norms [15].

The initial phase of formation – subject matter unregulated contradictory

Seems reasonable to state that the beginning of the formation of the institute of contractual succession falls on the first half of the 19th century – this period was marked by the adoption and entry into force of a certain number of major sources of civil law within the territory of Europe – the Provincial Law of Baltic Provinces [16], the Civil Law of the Republic of Latvia [17], German Civil Code (Bürgerliches Gesetzbuch) [18], the Civil Code of Austria (Allgemeines Bürgerliches Gesetzbuch) [19], Swiss Civil Code (Zivilgesetzbuch) [20], the French Civil Code (Code Civil des Français) [21]. In relation to the formation of contractual succession as an institution, most normative regulations embraced the concept of Roman inheritance law, according to which the property was inherited only by a will and by law [22, 212]. This was the obvious problem of law making during specified period – Remy Kabriyak (Rémy Cabrillac) notes that one of the features of the period was «the use of the so–called continuous codification of the law, which exists as a rational regrouping of the law in force without changing it» [23, 88].

Undoubtedly, this approach did not fit into the framework of contractual succession –a discrete connection of the institution of the inheritance law with Institutions of law of obligations could not lead to the creation of a common understanding in regard to contractual succession and, as a result, to its correct implementation in practice. In turn, a small number of external conflict rules – only seven conventions were adopted in the framework of International Conference on Private Law as of 1940 [24] - was designed to resolve applicable material law issues. Additionally, some of these conventions were denounced by the participants. Due to this fact it could not serve as a basis for finding the applicable substantive and procedural law. Undoubtedly, to mediate and correct the legal regulation of relations arising in the field of contract inheritance, was supposed to be used by the insert effect, derived by Rudolf Jering in 1875 [25, 9] and improved in relation to obligation law by Julian Baily [26, 887–888]. The gap method mentioned above is particularly relevant in a situation of radically reformed creation of prior rights [27, 147]. Because of this reason this method has been applied in a situation of changing Section 1217 of the Civil Code of Austria.

The original version of this provision regulating sufficiently large reservoir of relationship could create certain difficulties in the situation of recognition and enforcement ex ante and ex post. This provision regulated the essential terms of the marriage contract, maintenance contract, embraced inheritance relations [28] and looked like a legal chimera in understanding by Khokhlov [29, 4, 14]. The interpretation of the contract based on this norm would be extremely difficult. A specific classification of mixed contracts proposed and enforced by Ogorodov and Chelyshev [30] reinforced the position that an unnamed, completely original contract with a very flexible structure, may have a tremendous effect being ensured with non-specified characteristics. Simultaneously this contract possessed a lacuna. In this case, the legal regulation of these contracts was based on the general rules of civil law in regard to contracts, business practices, analogy of law and analogy of legislation [31, 55]. However, the designed flexibility was not a sufficient condition for the existence of the contract – the main task of the contractual succession is to define and consolidate the concept and design of inherited obligations and analogy presence in the legal regulation. Such a big exponent is not condu-

cive to understanding the values of this institution in the situation of interpretation and qualification of the rules and norms mentioned above. While maintaining this provision in a situation of unchanged position when persons entering into legal relations under contract concluded it in prescribed manner, it would be exposed to the risk of the spread of the conscious «unforeseen factors" (unforeseen events) in understanding by Thomas R. Haggard [32, 285]. In the modern understanding of obligation law, this deal would have to be acknowledged within the essential dispositions of the category of family arrangements, which was not intended to create, or multiply the family wealth [33, 101]. Legal relationship based on a contract concluded by way of Section 1217 of the Civil Code of Austria, in the original edition of this norm also suffered a lack of equity of persons in succession proceeding, and simultaneously in contractual relationship proceeding. Contractual succession codification in respect and superiority of the inheritance of a single subject (spouse) jeopardizes the hereditary rights and interests of other members of the family of the testator – children and parents. Despite the fact that these subjects were introduced into the legal framework of the Civil Austrian Code through legitimate heirs institution (Rücksicht Notherben) [34] and their rights have been secured by normative fixation of a compulsory share (Pflichttheil) [35] the absence of references to the necessary priority inheritance sources (contract, will, law) put the spouse under situation of inheritance by a contract in the state of indefinite detention on higher level compared with the inheritance of legitimate heirs according to other legal ground. This situation de jure brings into a subordinate position legitimate heirs, which excluded from contractual succession according to their individual legal status. This provision violates the principle of equality, according to which the legal equality of participants in civil relations is not only instrumental principle, but also appears as a discrete feature of a method of legal regulation [36, 10]. This violation is an abuse of rights, which foundation was wound up, notwithstanding the provisions of section 1249 of the Civil Code of Austria, according to which the contract of inheritance can also be concluded between the spouses [37]. Whether the term «also» (auch – German) opposed to the term "spouses" (Ehegatten – German) means an unlimited number of persons, who have the capacity to contract inheritance, remains unclear. The term "also" is a predicate with respect to the term «spouse» and, depending on the situation, can expand it [38, 93] introducing propositional subject (e.g., to identify the persons who are going to marry or recognize marriage in civil procedure (in court)), and otherwise narrow this volume by introduction of the antipositional subject in regard to the subject designated by the term «spouse», mediating criterion of fairness and validity in law – the predicate has a variably-prognostic function [39, 359]. For the legislator, fairness appears as an application of equal magnitude for the common good of various subjects [40, 96]. Because this agreement provides for consolidation of hereditary rights and obligations and is constituted as an act of long–term planning, its impact both on the subjects and the rights and obligations of the third parties must be fixed either in the law, as it is done in Paragraph 44 of the Civil Code of Austria, or in the body of the contract. Section 44 of the Civil Code of Austria, securing the essential terms of the marriage contract, gives a comprehensive picture of the duties of spouses: according to the agreement the spouses must live together, raise children and give mutual support to each other [41]. Interpretation of the concept of contract, based on Paragraph 1217 of the Civil Code of Austria and on the rules of the closed contract (contract, based on Paragraph 44 of the Civil Code of Austria) does not make clear what the legislator meant under the term «mutual support». According to the meaning of Paragraph 1217, mutual support is the maintenance of a discrete spouse or inheritance rights and obligations arising from the family law. Undoubtedly, the relationships based on the data standards require qualification by analysis of the applicable collision and material law.

The terminology applied by the legislator means the construction of the norms also acknowledged as equivocal – the concept applied in relation to design of Paragraphs 44 and 1217 and designated for general legal regulation of a complex nature of the marriage contract; and the concept expressed by the term «conception of marriage» (Begriff der Ehe – Allge-

meines Bürgerliches Gesetzbuch, Paragraph 44., Ehepakte – Allgemeines Bürgerliches Gesetzbuch, Paragraph 1217). Does this mean that the contract based on Paragraph 1217 of the Civil Code of Austria by virtue of dispositions based on formula "lex specialis derogate legi generali" will regulate hereditary relationship? The legal practice states, that individually undefined rights and obligations do not give rise to a contract [42]. Simultaneously this situation does not serve as a basis for determining of the legi generali due to legal relationship diversity. Thus, the correct answer to the question of legal regulation and the determination of the applicable law cannot be resolved appropriately. The legislator is often forced to use the reception of indeterminate language, «rubber» standards, legal principles, target standard programs to extend the application of the law in terms of the situations unknown to him, but which may occur potentially [43, 22]. However, in this case, the relationship of contractual relations inheriting object data correlates with other mediated by this provision and can lead to an estimated error described by Melvin A. Eisenberg (evaluative mistake) [44, 1581–1584] and to a substantiation of delusion about the motives of the parties in legal transaction and its essential terms and conditions. Changes in Paragraph 1217 of the Civil Code of Austria took place only in 2009 entering into force in 2010 [45]. These changes contain important clarification in relation to the family and inheritance law, however, an exception in regard to the law of obligations under situation of mutual maintenance without proper interpretation seems unfavourable to legal regulation – the obligation on mutual maintenance may be mediated by another transaction (legate) or side–agreement between the surviving spouse and the child or a third person. So the question how an object of legate, or by contract, will impact the subject of the main contract is not clear. This seems as an omission in relation to the legal regulation, because the subject of the legate and a side agreement may include the following rights and obligations: the transfer of the authority to use things, which are the part of the inheritance mass, the transfer of property rights which are the part of the inheritance, the transfer objects of another kind to the recipient of legate property, the performance of certain work for the recipient, providing a specific service or services, enforcement to the benefit of the recipient of legate periodic payments, and other actions or refraining from them. In the original version of Paragraph 1217 of the Civil Code of Austria, the maintenance of a spouse existed as a personal obligation of the other spouse, and this obligation was not transferable by inheritance. The situation changed in 2010 when the content of this obligation was allowed to be qualified as a subject of legal regulation of the family law regarding the contractual inheritance, and as a result, it became the subject of contractual succession with appropriate consequences. Since this moment a lasting nature of the relationship under contractual succession and the associated changes in legal regulation may give raise to the conflict of laws.

A positive example for a specified period of regulatory consolidation is the inheritance contract mentioned in Section 2278 of the German Civil Code. This provision states that "dispositions other than appointment of heirs, legacies and testamentary burdens may not be made contractually» [46]. Noting evaluative concept of the term «testamentary burdens» one should agree with the legal distinctness and unambiguous orientation of this provision in the regulation of inheritance and law of obligations – in conjunction with Paragraph 242 of the German Civil Code, which requires the debtor to perform inherited liabilities in accordance with the principles of good faith and customs [47] and thus gives the possibility of enforcement of ex ante and ex post obligations adaptive characteristics, without tying them with lacunas in law.

As can be seen from this analysis in the initial period of formation of contractual succession this institution has developed a system with certain exceptions and may be called «polarized law», as it was used by Thomas Batty (Thomas Baty) in the title of his work [48]. For the purposes of this article the term «polarized law» will mean a legal regime due to a sufficiently high degree of legal particularism, which does not provide the following basic legal imperatives: firstly, it does not provide a common understanding of the legal phenomena of contractual succession; and secondly, this regime does not provide a uniform interpretation, perception and performance of lawfully concluded deals in the

field of contractual succession. Also, legal particularism under contractual succession does not provide the opportunity to progress in the understanding of evolution of normative regulation of this institution. Legal acts adopted in the specified period did not contain the concept of the rule of essential law under meaning by Hugh Evander Willis (1929) and, consequently, peculiarities of its application in modern legal situation. This statement is confirmed by the comparison of examples between the German Civil Code and the Provincial Law of the Baltic Provinces. The German Civil Code defines the contract as a relation which is approved by its legal value [49]. In turn, the Provincial Law of the Baltic Provinces defines the contract as an agreement of several parties [50]. This contract concept implemented in the German Civil Code is still preserved by taking the spirit of Corpus Juris Civilis [51]. Of course, the definition of succession contract fixed in the German Civil Code as agreements in which the testator can only carry out the appointment of heirs, legacies and testamentary burdens [52] is worthy of respect, but a general definition of the contract as a relation creates a dichotomy described by Kistjakovsky [53] and, as a consequence, the contradiction between verbal and real definitions [54, 163]. As of this period, the rule of law, in particular, Paragraph 1217 of the Civil Code of Austria cannot be divided with respect to the sphere of subject regulation – the traditional complex category «leges specialis derogat legis generals» does not give a clear answer to the opportunities offered by privileges.

Perhaps this situation formed due to the fact, that Roman private law had no concept of inheritance contract. Moreover, the inheritance contract was restricted to conclusion [55, 1412] – there was only opportunity to inherit under the law and the will [56, 282]. In turn, the mutual inheritance of mother and children [57] was difficult to recognize as a contractual succession because households remained under the authority of a householder [58, 863, 235], and the capacity of children stemmed from their power as juveniles to be under the care of parents [59, 222]. Thus the conclusion of succession contract legally occurred nor between the mother and child, but actually between the mother and the guardian or the creditor (the testator) and the debtor (the heir), where they coincided in one person, which destroyed the binding force of obligation, according to the formula «nemo potest sibi debere»[60, 236].

However, to concede the initial stage of the temporal formation in the case of the legal framework of contractual succession as uniquely unsuccessful seems wrong. During this period a basic concept was formed expressing the general concept of contractual succession. This concept was fixed by the term «future inheritance" – hereditatis futurae (Latin) (Civil Law of the Republic of Latvia, Section 646, the Civil Code of Austria (Allgemeines Bürgerliches Gesetzbuch), Paragraph 1249). Moreover, the concept hereditatis futurae was enshrined in the Swiss Civil Code by introducing the institution fixed by the term «future inheritance rights" [61]. Competing with the basic concept of the law of succession (inheritance – a legal person), this situation allows to clarify the subject matter of contractual succession, which was assigned to the concept expressed in the term "persona legalis intentiones" [62]. The emergence of contractual succession revealed the need for differentiation and delimitation of terminology – it seemed necessary to distinguish among concepts and their understanding of the terms "inheritance", "hereditary process» and «process of fulfilment of obligations» in relation to succession basis. A separate concept is needed to highlight and normatively evaluate the concept of hereditary obligations.

Contractual succession as a legal transplant – conversion of normative regulation and occurrence of related problems

As Rozin notes, the second factor in the evolution of law is a disorder and often contradictory rules of law [63, 151]. Of course, this effect is observed in the legal regulation of contractual succession.

Alan Watson mentioned the possibility in the Roman law to create legal transplants (transplantability of Roman Law) [64, 14] and pointed out to the need to facilitate the perception of Roman law institutions in other legal systems [65, 313]. Perceiving contractual succession as a continuously evolving transplant using donatio

mortis causa formula and correlating with the category named "a provisional acquisition of inheritance" in its classical interpretation [66, 995], one should note the impossibility of using this category in modern law – as a contemporary concept of obligation law and succession law will not allow to mean this action as a legal fact, giving a positive meaning to the inheritance law and consequences. In order to resolve this problem, closely related to contractual succession, the legal doctrine needs to overcome this trend.

In a number of cases in relation to contractual succession certain changes were made, which may cause intertemporal conflict. This category includes amendments to the Civil Law, carried out by 8 May 2014 [67], according to which the institution called «persons entitled for compulsory share» was implemented. By this institution the group of heirs now included the spouse of the testator and descending and ascending relatives [68]. Because further on the legislator carried out sequential corrections of Section 642 of the Civil Law of the Republic of Latvia, this ensured the impossibility of deviation from inheritance of persons having the status mentioned above [69]. These changes in relation to contractual succession are quite controversial. The contract of inheritance in particular is a continuing legal relationship and the exclusion of the institution of forced heirship in the form, in which it existed before, means that these amendments must be accompanied by an explanation of the application of these norms in the period of time before these changes were made as from 8 May 2014 forced heirs were entitled to a compulsory share in the property of the deceased [70]. In turn, after the law was amended, persons entitled for compulsory share could only demand the issuance of monetary equivalent, evaluated in the amount of money, but the certificate of inheritance were not to be issued to them [71]. It seems reasonable to point out that the real property of the testator may have exclusive value for the heir (the Civil Law of the Republic of Latvia, Sections 870, 872, 873) while the value of the property, produced according to objective criteria, may not satisfy the heir, and as a result of these circumstances a dispute may arise. The principle of legal certainty provides that the rights must be «accurate, predictable and calculated» [72] in all legal relationships. Changing the legal status of the subjects included into the relationship is justified and possible in the case of succession by law or will. In a situation of contractual succession, when the individual legal status of an heir is established in the contract and provides authorized actions in relation to the testator, these changes should not be, otherwise a special explaining norm needs to be introduced – according to Gilberte Closset-Marchal existing intertemporal conflict leads to the fact that the same factual structure complies with the requirements of at least two legal orders [73, 7]. In this case, as Baiba Rudevska notes legislator should "provide several conceptual solutions to intertemporal conflicts" [74, 2]. As it was rightly pointed out by Maris Onzevs, citing Wielinger [75, 122.-123.]: to establish the correct interval of time of the action of a legal norm two criteria must be respected:

1) availability and vector distribution of a binding force of legal norms in time,
2) with regard to the type of legal relationship ceased, continuous or future concerns may affect the binding effect of a legal norm [76, 14].

Applying legal norms in the manner indicated by Law On Official Publications and Legal Information [77], the parties must be guided first of all by the provisions of the Constitution of the Republic of Latvia (Law On Official Publications and Legal Information, Section 9), where in Section 105 of the Constitution it is state, that "everyone has the right to own property. Property shall not be used contrary to the interests of the public» [78]. The interest in the succession law especially manifested «in balancing the interests of the heirs and the testator» [79, 14.-15.], The introduction of the institution «persons entitled for compulsory share» without specific reference in regard to the duration of this provision in concrete time interval can lead to unpredictable consequences – contractual succession has aleatory nature in relation to property value and under situation of possible reduction of its monetary significance will result in a loss for the successor by agreement, whereas the right to claim from the persons entitled to a compulsory share can be fixed according with the highest value and produce dispute and possible claims. Be-

sides, the change of legal regulation of lasting relationships introduced to the Civil Law of the Republic of Latvia on 8 May 2014 eliminating forced heirship institution and replacing the undisputable right to obtain the inheritance mass subject to the right of claim, created the risk of legal non-recognition (John W. Shaw, 1977) of property and valuable interest [80, 145] in respect to persons entitled to compulsory share.

Francis J. Mootz III specifies that by «the design of the rule of law as a product of the circumstances prevailing cultural character.....society achieve significant privileges and benefits» [81, 984]. Implementing this provision with regard to the norms mentioned above the explainatory act should be adopted.

As of the moment contractual succession in relation to trans-border inheritance system as a whole exists as an example of legal particularism, recalling the time when within the territory of the Baltic provinces of the Russian Empire a huge number of regulations mediating inheritance law possessed legislative force. Some regulatory changes, implemented in the Civil Code of Austria in 2009 [82] and entered into force in 2010 [83], do not solve the complex problem of the ordering of legal regulation in trans-border inheritance situation - on the contrary, it creates a risk of imbalance relationship. Analogical situation takes place in respect to the amendments mentioned above with regard to the Civil Law of the Republic of Latvia. According to Professor Vassily Sinaisky, particularism complicates the understanding of law even for experts let alone for ordinary people [84, 30].

References

1. Хесус Г.Г.М. Римское частное право: казусы, иски, институты: пер. с исп. / Г.Г.М. Хесус; отв. ред. Л.Л. Кофанов. – М.: Статут, 2005.
2. Барон Ю. Система римского гражданского права: в 6 кн. / Ю. Баро ; предисл. В.В. Байбака. – СПб.: Юрид. центр Пресс, 2005.
3. Max Radin, Fundamental Concepts of the Roman Law, 13 California Law Review//207 (1925).
4. Барон, Юлиус. Система римского гражданского права : в 6 кн. / Ю. Барон ; предисл. В.В. Байбака. – СПб.: Юрид. центр Пресс, 2005.
5. Reinhard Zimmermann. The Law of Obligations. Roman Foundations of the Civilian Tradition. – Cape Town: Juta and Co., ltd, 1990.
6. K.Torgāns. Saistību tiesības. I daļa. Mācību grāmata. – Rīga: Tiesu namu aģentūra, 2006.
7. Д.В.Дождев. Римское частное право. М.: изд. ИНФРА М–Норма, 1996.
8. Ibid.
9. J.T.Abdy., Bryan Walker. The Commentaries of Gaius and rules of Ulpian. – 3rd ed. – Clark: The Lawbook Exchange ltd, 2005.
10. Пухан, Иво. Римское право: (Базовый учебник): Перевод с македонского / Иво Пухан, Мирьяна Поленак–Акимовская; Под ред. В.А.Томсинова; М.: Зерцало, 2009.
11. В.С.Нерсесянц. Философия права. М.: Изд. Норма–Инфра М, 2001.
12. Pesonam sustinere (latiņu val.) в ситуации договорного наследования – мультипликация персоны (участника договорного наследования) в форме создания презумпции волевого акта корреспектирующего волеизъявление между наследодателем, наследником и возможным третьим лицом.
13. Д.В.Дождев. Римское частное право. Москва. ИНФРА М–Норма, 1996.
14. Robert Joseph Potier. A Treatise on the Law of Obligations, Or Contracts. – London: A.Strahan, 1806.
15. Translocation in law – legal force of mandatory material or conflict norms encroachment into the legal field of another norm and legal action of these norm reciprocal linkages and corresponding intrusion into individualized legal relationship.
16. Provincial Law of the Baltic Provinces. Enacted 25.11.1864. Into force 01.07.1865. Repealed: 01.01.1938.
17. The Civil Law of the Republic of Latvia. Enacted: 28.01.1937. Into force: 01.09.1992. Published: “Valdibas Vestnesis”, 41, 20.02.1937. With amendments.

18. German Civil Code. Enacted 18.08.1896. Into force 1.01.1900. Published: RGBl. S. 195. With amendments.

19. General Civil Code of Austria. Enacted 1 June 1811. Into force 1 January 1812. Published: JGS No. 946/1811. With amendments.

20. Swiss Civil Code. Enacted 28 May 1904. Into force 10 December 1907. Published: BBl 1904 IV 1, 1907 VI 367. With amendments.

21. Code Civil des Français. Revendiquée 1.01.1804. Entrée en vigueur 21 mars 1804. Avec des changements.

22. Andrew Borkowsky. Textbook on Roman Law. Property was normally inherited under a will or as a result of an intestacy. Andrew Borkowsky. Textbook on Roman Law. – 2nd ed. – London: Blackstone Press Limited, 1997.

23. Реми Кабрияк. Кодификации. М.: Статут, 2007.

24. Hague Conference on Private International Law. The "old" Conventions//https://www.hcch.net/en/instruments/the–old–conventions (28.03.2016).

25. Рудольф Иеринг. Борьба за право. М.: Феникс, 1991.

26. Julian Baily. Construction Law. – 1st ed. – London: Routledge, 2011.

27. Реми Кабрияк. Кодификации. М.: Статут, 2007.

28. Allgemeines Bürgerliches Gesetzbuch. Paragraph 1217. Ehe–Pakte heißen diejenigen Verträge, welche in Absicht auf die eheliche Verbindung über das Vermögen geschlossen werden, und haben vorzüglich das Heiratsgut; die Widerlage; Morgengabe; die Gütergemeinschaft; Verwaltung und Fruchtnießung des eigenen Vermögens; die Erbfolge, oder die auf den Todesfall bestimmte lebenslange Fruchtnießung des Vermögens, und den Witwengehalt zum Gegenstande. Allgemeines Bürgerliches Gesetzbuch. StF: JGS Nr. 946/1811.

29. Хохлов Е.Б. Юридические химеры как проблема современной российской правовой науки// Известия ВУЗов: Правоведение: Научно–теоретический журнал . – 01/2004. – N1.

30. Огородов Д.В., Челышев М.Ю. К вопросу о видах смешанных договоров в частном праве // Законодательство и экономика, 2006, № 2.

31. Ibid, p.55.

32. Thomas R. Haggard. Legal drafting in a nutshell. St.Paul, Minn: West Publishing Co., 1996.

33. Осакве, К. Экономико–философская интерпретация договора в англо–американском общем праве: Либеральная теория договора//Журнал российского права. –2004. – № 9.

34. Allgemeines Bürgerliches Gesetzbuch. Paragraph 764. Der Erbtheil, welchen diese Personen zu fordern berechtigt sind, heißt: Pflichttheil; sie selbst werden in dieser Rücksicht Notherben genannt. StF: JGS Nr. 946/1811.

35. Ibid.

36. Алексеев С.С. Предмет советского гражданского права и метод гражданско–правового регулирования// Антология уральской цивилистики: сб.статей. 1925–1989. М., 2001.

37. Allgemeines Bürgerliches Gesetzbuch. Paragraph 1249. Zwischen Ehegatten kann auch ein Erbvertrag, wodurch der künftige Nachlaß, oder ein Theil desselben versprochen, und das Versprechen angenommen wird, geschlossen warden. Allgemeines Bürgerliches Gesetzbuch. StF: JGS Nr. 946/1811.

38. Асмус В.Ф.Логика. – М.: Издательство политической литературы, 1947.

39. Философский словарь. Под ред. М.М.Розенталя и П.Ф.Юдина. М.: Издательство политической литературы, 1963.

40. Грось А.А. Защита гражданских прав: сравнительный анализ институтов римского частного права и действующего гражданского и гражданского процессуального права // Известия вузов. Правоведение. 1999. № 4.

41. Allgemeines Bürgerliches Gesetzbuch. Paragraph 44. Begriff der Ehe. Die Familien–Verhältnisse werden durch den Ehevertrag gegründet. In dem Ehevertrage erklären zwey Personen verschiedenen Geschlechtes gesetzmäßig ihren Willen, in unzertrennlicher Gemeinschaft zu leben, Kinder zu zeugen, sie zu erziehen, und sich gegenseitigen Beystand zu leisten. Allgemeines Bürgerliches Gesetzbuch. StF: JGS Nr. 946/1811.

42. Allgemeines Bürgerliches Gesetzbuch. Paragraph 869. Die Einwilligung in einen Vertrag muß frey, ernstlich, bestimmt und verständlich erkläret werden. Ist die Erklärung unverständlich; ganz unbestimmt; oder erfolgt die Annahme unter andern Bestimmungen, als unter welchen das Versprechen geschehen ist; so entsteht kein Vertrag. Wer sich, um einen Andern zu bevortheilen, undeutlicher Ausdrücke bedient, oder eine Scheinhandlung unternimmt, leistet Genugthuung. Allgemeines Bürgerliches Gesetzbuch. StF: JGS Nr. 946/1811.

43. Кашанини В.В. Неопределенность права и усмотрение правоприменителя как ограничители использования централизованных методов регулирования// Вопросы государственного и муниципального управления. 2013. № 4.

44. Melvin A. Eisenberg. Mistake in Contract Law// California Law Review, 2003; 91 (6).

45. Allgemeines Bürgerliches Gesetzbuch. Kundmachungsorgan: JGS Nr. 946/1811 zuletzt geändert durch BGBl. I Nr. 135/2009. Inkrafttretensdatum: 01.01.2010.

46. German Civil Code. Section 2278. (1) In a contract of inheritance, each of the parties to the contract may make contractual dispositions mortis causa. (2) Dispositions other than appointments of heirs, legacies and testamentary burdens may not be made contractually. German Civil Code. Enacted 18.08.1896. Into force 1.01.1900. Published: RGBl. S. 195. With amendments.

47. German Civil Code. Section 242. Performance in good faith. An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration. German Civil Code. Enacted 18.08.1896. Into force 1.01.1900. Published: RGBl. S. 195. With amendments.

48. Batty Thomas. Polarized Law. – London: Forgotten Books, 2015.

49. German Civil Code. Title 3. Contract. Section 145. Binding effect of an offer. Any person who offers to another to enter into a contract is bound by the offer, unless he has excluded being bound by it. German Civil Code. Enacted 18.08.1896. Into force 1.01.1900. Published: RGBl. S. 195. With amendments.

50. Vietējo Civillikumu Kopojums. Section 3105. the contract understood as an agreement of several parties. Enacted 25.11.1864. Into force 01.07.1865. Repealed: 01.01.1938.

51. Bürgerliches Gesetzbuch. In der Fassung der Bekanntmachung vom 02.01.2002 (BGBl. I S. 42, ber. S. 2909, 2003 I S. 738) zuletzt geändert durch Gesetz vom 29.06.2015 (BGBl. I S. 1042) m.W.v. 17.08.2015.

52. German Civil Code. Section 2278. Permissible contractual dispositions. (2) Dispositions other than appointments of heirs, legacies and testamentary burdens may not be made contractually. German Civil Code. Enacted 18.08.1896. Into force 1.01.1900. Published: RGBl. S. 195. With amendments.

53. Б.А.Кистяковский. Философия и социология права. С.–Петербург: Изд. Русского Христианского Гуманитарного института, 1998.

54.Ibid, p.163.

55. Победоносцев К.П. Курс гражданского права. Тома I–III. М.: Директ–Медиа, 2014.

56. И.Б.Новицкий. Римское право. Москва. ТЕИС, 2002.

57. Ibid, p. 285.

58. Юлиус, Барон. Система римского гражданского права. С.–Петербург: Изд. Р.Асланова «Юридический центр Пресс», 2005. Manuel Jesus Garcia Garrido. Derecho privado romano: Casos, acciones, instituciones. М.: Статут, 2005.

59. Д.В.Дождев. Римское частное право. Москва. ИНФРА М–Норма, 1996.

60. Римское частное право: Учебник /под ред. И.Б. Новицкого, И.С. Перетерского. – М.: 2006.

61. Swiss Civil Code. Article 527. Swiss Civil Code. Enacted 28 May 1904, came into force 10 December 1907. Published: BBl 1904 IV 1, 1907 VI 367. With amendments.

62. Persona legalis intentiones – person in legal contemplation. Wilson v. Estate of WL Kings. 131 Ind. App. 412 (1960). 170 N.E.2d 63.

63. Розин. В.М. Генезис права: методологический и культурологический анализ. – М.: Nota Bene, 2003.

64. Alan Watson. The Making of the Civil Law. – Cambridge: The Harvard University Press, 1981.

65. Alan Watson. Comparative Law and Legal Change// Cambridge Law Journal, 1978 (37).

66. Person receiving a legacy (the author's note) is recognized as an heir. Cited: Барон, Юлиус. Система римского гражданского права: в 6 кн. / Ю. Барон; предисл. В.В. Байбака. – СПб.: Юрид. центр Пресс, 2005.

67. The Civil Law of the Republic of Latvia. Part Two. Inheritance Law. Enacted: 08.05.2014. Into force: 01.07.2014. Published: "Latvijas Vēstnesis", 98 (5158), 22.05.2014. With amendments.

68. The Civil Law of the Republic of Latvia. Section 423. Persons, entitled for compulsory share are the spouse and descendants, but if there are no descendants, then ascendants of the nearest degree of kinship. The Civil Law of the Republic of Latvia. Part Two. Inheritance Law. Enacted: 08.05.2014. Into force: 01.07.2014. Published: "Latvijas Vēstnesis", 98 (5158), 22.05.2014. With amendments.

69. The Civil Law of the Republic of Latvia. Section 642. In inheritance contracts the provisions concerning preferential shares shall be complied with, unless those who are concerned themselves directly or as parties to the contract have relinquished their rights. If this has not been complied with, then persons, entitled for compulsory share may contest the contract while the estate–leaver is alive as well as after his or her death. The Civil Law of the Republic of Latvia. Part Two. Inheritance Law. Enacted: 08.05.2014. Into force: 01.07.2014. Published: "Latvijas Vēstnesis", 98 (5158), 22.05.2014. With amendments.

70. The Civil Law of the Republic of Latvia. Section 425. The compulsory share of an estate shall be one half of the value of that share of the estate which an heir would inherit pursuant to law. The Civil Law of the Republic of Latvia. Part Two. Inheritance Law. Enacted: 08.05.2014. Into force: 01.07.2014. Published: "Latvijas Vēstnesis", 98 (5158), 22.05.2014. With amendments till 8 May 2014.

71. Dagnija Rušeniece. Succession certificate for persons entitled for compulsory share is not issued. Persons entitled for compulsory share vested with the right to claim for a compulsory share allotment in monetary expression. Latvijas Vēstneša portāls// http://www.lvportals.lv/visi/e–konsultacijas/5182–mantojuma–apliecibu–neatnemamas–dalas–tiesigajiem–neizsniedz/ (3.03.2016).

72. Taha Ayhan. The Principle of Legal Certainty in EU Case Law// http://www.todaie.edu.tr/resimler/ekler/0f455a8e4a0f319_ek.pdf?dergi=Review%20of%20Public%20Administration (14.03.2016.).

73. Gilberte Closset–Marchal. L'application dans le temps des lois de droit judiciare civil. Bruxells, Brilliant, 1983.

74. Baiba Rudevska. Procesuālā likuma intertemporalā piemerošana administratīvajā un civilprocesā//Jurista Vārds, 3.07.2007., Nr.27 (480).

75. Wielinger G. Das Verordnungsrecht der Gemeinden. Graz: Leykam–Verlag, 1974.

76. Maris Onzevs. Legal aspects of temporal scope of legal norms in the state of law. Dissertation. Riga, 2015.

77. Law On Official Publications and Legal Information. Enacted: 31.05.2012. Into force: 01.07.2012. Published: "Latvijas Vēstnesis", 96 (4699), 20.06.2012. With amendments.

78. The Constitution of the Republic of Latvia. Section 105. Enacted: 15.02.1922. Into force: 07.11.1922.

Published: "Latvijas Vēstnesis", 43, 01.07.1993., "Ziņotājs", 6, 31.03.1994. With amendments.

79. О. В. Мананников. Наследственное право России. – М.: Издательско–торговая корпорация «Дашков и К°, 2004.

80. John W. Shaw. Domestic Relations–Husband's Vested Interest in Retirement Plan is Divisible as Marital Property// Missouri Law Review, 1977: Vol. 42, Iss. 1.

81. Francis J. Mootz III. Legal Classics: After Deconstructing the Legal Canon//North Carolina Law Review, 1994; (72).

82. Bundesgesetzblatt für die Republik Österreich. Nr: GP XXIV IA 673/A AB 275 S. 29. BR: AB 8146 S. 774.

83. Allgemeines bürgerliches Gesetzbuch. § 1217. (1) Ehepakte heißen diejenigen Verträge, welche in der Absicht auf die eheliche Verbindung über das Vermögen geschlossen werden. Sie haben vorzüglich die Gütergemeinschaft und den Erbvertrag zum Gegenstand. Inkrafttretensdatum 01.01.2010. Zuletzt aktualisiert am 08.04.2015.

84. Prof. Dr. V.Sinaiskis. Civillikuma principi un ģimenes tiesības//Tieslietu Ministrijas Vēstnesis, 1938; Nr.1