Цивільне право і цивільний процес; сімейне право;
міжнародне приватне право

UDC 340+347.4

Khalabudenko Oleg
PhD in Law, Associate Professor,
Associate Professor of the Political Science and Law Department
Kyiv National University of Construction and Architecture
Халабуденко Олег Анатолійович
кандидат юридичних наук, доцент,
доцент кафедри політичних наук і права
Київський національний університет будівництва і архітектури
ORCID: 0000-0001-9478-0164

MORAL FOUNDATIONS OF THE BASIC CATEGORIES OF CONTRACT LAW: SOME REFLECTIONS IN THE CONTEXT OF THE EMERGENCE "THE NEW PRIVATE LAW THEORY"
МОРАЛЬНІ ЗАСАДИ БАЗОВИХ КАТЕГОРІЙ ДОГОВІРНОГО ПРАВА: ДЕЯКІ МІРКУВАННЯ В КОНТЕКСТІ СТАНОВЛЕННЯ «НОВОЇ ТЕОРІЇ ПРИВАТНОГО ПРАВА»

Summary. *Introduction. The article notes that in the context of the crisis phenomena occurring in the plane of national legal spaces, the problem of jurisdictional design of 'access points' as loci of sustainable development of human civilization is of paramount importance. The author believes that maintaining sustainable growth in 'access points' is possible if the basic model of commodification of goods is preserved. The author argues that under these conditions, the definition of moral boundaries in the process of commodification of goods is one of the main methodological issues that needs to be resolved in the process of formation of the 'New Private Law Theory'. The author is convinced*

that the process of commodification is, in principle, effective within the framework of taking into account the moral foundations of the relevant legal constructions.

Purpose. In this regard, the author refers to the origins of contract law, which developed in the Western legal tradition, and demonstrates that from the very beginning, despite the instrumentalist methodology aimed at justifying any imperatives – from utilitarianism to the 'will of the ruling class' – the fundamental categories of contract law are, in fact, based on moral considerations. The author supports his assumption with the conclusions drawn in the course of a brief analysis of (1) the grounds of contractual legal relations, (2) determination of the legal meaning of such grounds, and (3) correspondence between the grounds of contractual legal relations and the utilitarian result expected by their parties.

Materials and methods. The article is based on the analysis of a series of works dedicated to the New Private Law of Theory and in relation to the problems solved by the said scientific program (in particular, critical positions regarding methodological approaches to private law). When analyzing the materials, we used the method of legal constructivism as a meta-theoryю. The above metatheory presupposes, according to the author, consideration of legal phenomena and processes at three levels – at the level of social consciousness (in the form of structures of consciousness), at the level of reification of law (in the form of art objects) and at the level of subjective reality (reflections of participants in legal communication). The moral foundations of the relevant legal constructions of contract law are analyzed using the inter-temporal and inter-local comparative legal research.

Results. In the context of the tasks set, the author notes that the legal force of contracts based on the principle of 'pacta sunt servanda' (contracts must be fulfilled), as well as contracts based on 'promise', derives from an ethical convention that acquires a legal dimension within the relevant regulatory systems. In turn, the connection between the moral grounds of a contract (in their legal dimension) and the utilitarian result expected by the parties to a contract is

established according to the commutative model – for German law and quasi-German legal orders, this is a synalagmatic construction of a contract, for the common law legal orders – promissory estoppel. In any case, in the event of a conflict between the utilitarian outcome expected by the parties to the contract and the moral foundations of society, the latter is resolved in accordance with the moral expectations of society for the good faith behavior of the parties to the contract.

Discussion. The attempt made in this paper to draw attention to the fact that all known legal constructions of contract law are based on moral provisions aims to overcome the one-sided view of private law constructions as 'economic instruments' based solely on utilitarian considerations. The further exploration of the influence of moral imperatives as the transcendental basis of the relevant legal constructions (without excluding the nature of private law as a sphere of legal reality that determines the democratic forms of existence of a society functioning on the basis of the market), leads, in the author's view, to a change in the methodological basis of private law and clarifies the controversial provisions expressed by the initiators of the New Private Law Theory.

Key words: *New Private Law Theory, commodification, contract law, morality, pacta sunt servanda, promise, synallagma, consideration, estoppel.*

Анотація. *Вступ. У статті зазначається, що в умовах кризових явищ, які відбуваються у площині національних правових просторів, першорядного значення набуває проблема юрисдикційного оформлення «точок доступу» як локусів стабільного розвитку людської цивілізації. На думку автора, підтримання стабільного зростання в «точках доступу» можливе за умови збереження базової моделі комодифікації благ. Автор стверджує, що за цих умов визначення моральних меж у процесі комодифікації благ є однією з основних методологічних проблем, що потребує розв'язання в процесі становлення «Нової теорії приватного*

права». На переконання автора, процес комодифікації в принципі є результативним, якщо що передбачається врахування моральних засад відповідних юридичних конструкцій.

Мета. У зв'язку з цим автор звертається до витоків договірного права, що склалося у фарватері Західної традиції права, і демонструє, що від самого початку, попри інструменталістську методологію, спрямовану на обґрунтування будь-яких імперативів – від утилітаризму до «волі панівного класу», – базові категорії договірного права, у дійсності, мають своїм підґрунтям моральні міркування. Свою гіпотезу автор підкріплює висновками, зробленими під час стислого аналізу (1) підстав договірних правовідносин, (2) визначенням юридичного значення таких підстав, (3) відповідності між підставами договірних правовідносин та очікуваним їхніми сторонами утилітарним результатом.

Матеріали і методи. Роботу виконано на основі аналізу низки праць, присвячених Новій теорії приватного права, і в контексті проблем, які вирішуються названою науковою програмою (зокрема, критичних позицій щодо методологічних підходів до приватного права). Під час аналізу матеріалів було використано як метатеорію метод юридичного конструктивізму, що передбачає, згідно з автором, розгляд юридичних явищ і процесів на трьох рівнях – рівні суспільної свідомості (у формі структур свідомості), на рівні об'єктивації права (у формі арт-об'єктів) і на рівні суб'єктивної дійсності (рефлексії учасників правового спілкування). Моральні підстави відповідних юридичних конструкцій договірного права проаналізовано інтермпоральним та інтерлокальним порівняльно-правовим методом дослідження.

Результати. У контексті поставлених завдань автор зазначає, що юридична сила договорів, які ґрунтуються на принципі «pacta sunt servanda» (договори повинні виконуватися), так само, як і договорів, в основі яких лежить «promise» (обіцянка), походить від етичної конвенції, що набуває

юридичного виміру в рамках відповідних нормативних систем. Своєю чергою, зв'язок між моральними підставами договору (у їхньому юридичному вимірі) та утилітарним результатом, що очікується сторонами договору, встановлюється згідно з комутативною моделлю – для німецького права і квазі-німецьких правопорядків це синалагматична конструкція договору, для правопорядків Загального права – promissory estoppel. У всякому випадку в разі конфлікту, зумовленого очікуваним сторонами договору утилітарним результатом і моральними засадами суспільства, останній розв'язують відповідно до моральних очікувань суспільства, що висуваються до добросовісної поведінки учасників договору.

Перспективи. Вжита в роботі спроба звернути увагу на те, що в основі всіх відомих юридичних конструкцій договірного права знаходяться моральні положення, спрямована на подолання однобічного бачення конструкцій приватного права як «економічних інструментів». Подальші дослідження впливу моральних імперативів як підвалин відповідних юридичних конструкцій, не виключаючи самої природи приватного права як сфери правової дійсності, що визначає демократичні форми існування суспільства, яке функціонує на засадах ринку, веде, на думку автора, до зміни методологічного базису приватного права та уточнює дискусійні положення, висловлені ініціаторами програми Нової теорії приватного права.

Ключові слова: *Нова теорія приватного права, комодифікація, контрактне право, моральність, договори повинні виконуватися, обіцянка, синалагма, зустрічне задоволення, естопель.*

Problem statements. In the face of "dramatic changes taking place on the geopolitical map, legal deformation of nationally designed spaces and, at the same time, the sharply growing crisis of international communication, which has

largely lost its legal form, we are discussing the rapid concentration of authority and power in urban spaces and urban centers, which, in the context of the growing crisis, are an access point to basic material and social goods" [1, p.174].

In our view, sustainable emergence and development such "access points" is possible under the conditions of a commodified distribution of benefits, i.e. the process by which free, donated or even inalienable things (objects, services, ideas, nature, personal information, people or animals) are transformed by an act or fact into a commodity objects that can be bought and sold [*see* 2].

You should be aware, however, that **the process of commodification itself is often a challenge to the moral foundations of human communities and as such, as a precondition for the existence of such communities, requires an additional methodological foundation**. (Here, of course, we are talking about the extension of commodification to meritorious achievements). In our view, such a justification requires that the processes of commodification considered in the context of changing views of private law itself and its methodology. Most likely, this is the New Private Law model as "an approach that aims to bring a new perspective to the study of private law by moving beyond reductionist instrumentalist policy evaluation and narrow, rule-by-rule, doctrine-by-doctrine analysis" [*see* 3].

We believe that the emergence of new private law doctrine is possible if the fundamental methodological approaches to the main institutions and legal constructs of private law are changed. More specifically, we recognize as true the assertions that "the law of torts, contracts, and property – is at an interpretive impasse", since "the two leading conceptual theories of private law – corrective justice and civil recourse theories – both suffer from significant weaknesses" due to the fact that "these concerns of private law may even seem incoherent" [*see* 4].

It is important to note that researchers in the conditions of methodological crisis of private law are increasingly turning to the moral origins of institutions and constructions of the considered sphere of legal

reality – global and local private law. Researchers in the context of the methodological crisis of private law are increasingly turning to the moral origins of the institutions and constructions of the sphere of legal reality in question [*see* 5; 6; 7]. We believe that the problem of "epistemic inequality between quasi-universal Northern norms and laws and localized norms and laws from elsewhere" [8, p. 861] in the task of the "New Private Law Theory" can only be solved by turning to the search for universalized moral foundations of private law norms and corresponding legal constructions.

In this essay, turning to the origins of contract law that developed in the space of the Western legal tradition, **the author will show that, contrary to the claims of the advocates of instrumentalism (*Legal regulation theory*), who easily justify both utilitarianism and the imperative to distribute benefits, this crucial part of private law is based on moral grounds.** In the author's view, moral grounds of contract law acquire a legal character in the process of the formation of the relevant constructions of contract law.

In this context, it is permissible for moral reasons to undergo the process of commodification as long as the corresponding constructs of private law (in our case it is about contract law) implicitly but at the same time consciously retain them as their reasons. And this combination of implicit content and its perception must be present both at the level of the structures of public consciousness and at the level of the consciousness of the individual participants in legal communication.

Purpose. In human evolution, the contract has thus essentially played the role of a fundamental legal instrument that has conditioned the development of humanity as a biosocial community. By enabling social interaction, contractual forms of communication stand in contrast to the costly, unpredictable and ethically reprehensible forms of appropriation of goods, such as their forcible confiscation or clandestine theft. The development of the contract as a means of

legal communication in the Western legal tradition required the resolution of three seemingly mutually exclusive problems:

(1) finding a basis that binds each of the parties in the contractual legal relationship; (2) to give such a basis a legal meaning; and (3) reconciling the basis found for the contractual relationship with the utilitarian interests of each of the parties.

Materials and methods. The article is based on the analysis of a series of works dedicated to the New Private Law of Theory and in relation to the problems solved by the said scientific program (in particular, critical positions regarding methodological approaches to private law).

In particular, the programme article by Stefan Grundmann, Hans-W. Micklitz and Moritz Renner [8] note – "the quasi-monopoly of the economic analysis of law, especially in the field of business law, is (again) challenged by diverse approaches inspired by analytical philosophy, social theory, or political economy". However, in our opinion, modern private law requires not only the involvement of methodological approaches from related fields of knowledge, but also the formulation of its own methodology relevant for the assessment of factors determining the boundaries of the relevant legal constructs. Ralf Michaels [9], reflecting on the limits of influence of the Western legal tradition, whose analysis of the relevant contractual constructions formed the immediate subject of the present article, attempts to radically address the following questions: The suggestion that the new private law theory would have to stand the test of acceptance by the global legal community raises a question. Who is that "global legal community?" And does it go beyond Europe? From our point of view, the Western legal tradition, in the process of colonization, lost the moral foundations of law and in a perverted mercantile form unfortunately was adopted by other cultures. In other words, the problem is not in the very constructions offered by the Western tradition of law, but in their instrumentalist (pragamatic) interpretation.

Andrew Gold [10] points out – "The morality criterion requires that a theory recognize the law's claim to moral authority by articulating moral reasons for the law that allow one to appreciate how the law's claim to authority might be justified. Thilo Kuntz [11] underestimate the significance of moral norms and values that underlie private law. One cannot but agree with the conclusions of these authors. However, in our opinion, taking into account moral criteria when resolving issues of private law in its current situation presupposes the search for relevant methodological approaches.

When analyzing the materials, we used the method of legal constructivism as a meta-theory. The above meta-theory presupposes, according to the author, consideration of legal phenomena and processes at three levels – at the level of social consciousness (in the form of structures of consciousness), at the level of reification of law (in the form of art objects) and at the level of subjective reality (reflections of participants in legal communication). The moral foundations of the relevant legal constructions of contract law analyzed using the inter-temporal and inter-local comparative legal research.

The findings in the main body of the article are based on the works of Friedrich Carl von Savigny [12], Rudolf von Ihering [13], Karl Larenz [14], Charles Fried [15], Annabelle P. Harris [16], as well as analyses of laws and jurisprudence.

Outline of the main material. Since the Western legal tradition comprises two major *metacultural legal communitie*s, the civil law legal family and the common law legal family, and there are different core legal cultures within each of these communities, the way of searching for the idea of contract is different, but ultimately leads to the same result.

So, (1) what is the valid causa of a contract? The early works of the Bolognese school already define a contract as the agreement of two or more (persons) about the same thing. Thus, the main aim of medieval jurisprudence on contract law was to justify that pacts have the same enforceability as Roman name

contracts. This transformed the Roman principle that a mere pact does not give rise to a right of action (*ex nudo pacta actio non oritur*) into the exact opposite – a mere agreement between the parties gives rise to a right of action (*ex nudo pacta actio oritur*) [*see* 17, p. 77].

Canon law played a key role in resolving this question. On the grounds that God makes no distinction between different types of promises, the jurists of canon law regarded the breach of promises as *laesio fidei* (breach of trust), which constituted the sin of perjury and entitled such a breach to be brought before the ecclesiastical court. As early as the 13th century, medieval law adopted the famous maxim "*pacta sunt servanda*", which formed the basis for the fundamental principle of modern contract law in continental Europe – *solo consensus obligat* (the mere fact that an agreement exists binds the parties). **The legal validity of a contract, whose effective cause (*causa efficiens*) was based on the will of the persons entering into a legal relationship, was thus determined on the basis of ethical norms** [*see* 17, 77-78].

The development of contract in the common law legal family based also on the ethical force of a promise, but not on that of an oath, as was the case in civil law. The exchange of certain values in the future, to which a promise is made, involves certain risks. Mutual trust between the contracting parties can serve to reduce these risks while preserving free will as the existential core of human beings. Abuse of trust is immoral, which has led English jurists to argue that – "the promise principle unifies the law of contract and provides its moral foundation; the promise principle promotes freedom and autonomy because it ties contractual obligation to 'self-imposed' commitments" [*see* 19]. **Consequently, a promise is nothing more than an ethical convention that ensures that the contracting parties prevent each other from disloyal, opportunistic behavior in the future.**

(2) The legal formalization of the moral basis of the contract further depended on the results of the legal authority conferred on the contract by public

policy. At this stage, the question of the *iusta causa* of the contract was settled, but not the formal requirements for contracts in positive law. Natural law was of decisive importance in clarifying this question. As early as the eighteenth century, a jurist whose views were consistent with the natural law paradigm could easily explain that the idea that Roman law did not grant legal protection to "naked" covenants was not based on natural law and was therefore rejected.

The principle of "*pacta sunt servanda*" became a general principle of contract law, which was illuminated by natural law. At that time, any agreement that provided a sufficient basis for judicial protection was recognized as a contract.

Thus, the formalism characteristic of medieval law was replaced in modern times by the doctrine of *consensualism*. Hence the definition of a contract as "a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations" (Art. 1101 of the French Civil Code) [18].

Moreover, Art 1103 of the French Civil Code provides that "contracts which are lawfully formed have the binding force of legislation for those who have made them". The idea of this rule is rooted in the natural law writings of Thomas Aquinas, which later used by Jean Domat, one of the authors of the French Civil Code [*see* 17, p. 79].

At a certain point in the development of the doctrine of contract law, the legal community concluded that a contract is, primarily, an *agreement of several persons defining their legal relations in the form of an expression of their common will* [*see* 12]. Rudolf von Ihering, basing his contract theory on the theory of purpose in law, argues that there is a legal purpose at the heart of the will. In such a context, a contract regarded as a point of convergence between the interests of the contracting parties. In order to prevent the interests of the parties, which once coincided, from changing, the legal order gives the contract the force of law. Consequently, the binding force of the contract consists in "protecting its original

purpose from subsequent fluctuations of interests" [13, p. 54] of the persons who entered into contractual relations.

In contrast to the French doctrine of consensus and the German doctrine of contractual purpose, the common law based on the concept of contract as promise, according to which it is not consensus but the fact that one party relies on a promise made by the other party that is decisive for the contract. The concept of contract as promise, like the classical theory of contract as agreement, emphasizes the personal relationship between the parties. Such relationship, unlike the latter, is not based on an agreement but on a promise by one party to the other and the consideration for that promise by the person to whom it is addressed.

(3) However, the moral basis found for the contract and its legal "authorization" are insufficient if one does not take into account the utilitarian outcome expected by the contracting parties. One such outcome is the reciprocal granting of benefits.

It is worth noting that the views of civil law and common law diverge on the issue of benefits and their legal valuation. Thus, French civil law, taking into account the fact that the mutual restriction of freedom in contractual relations can be risky from the point of view of exchange or fundamentally free from additional risks not provided for in the corresponding contractual construction, distinguishes between commutative and *aleatory* (risky) reimbursable contracts. A commutative contract presupposes that the amount of the mutual performance that the parties render or are obliged to render is directly determinable and does not depend on an unknown, surmountable event, as provided for in the contract.

The idea of the commutative effect of a contract is anchored in *synallagmatic* contractual obligations. It has been known since Roman law and is now enshrined in the contract law provisions of many civil law countries.

A contract is recognized as *synallagmatic* if each of the parties is mutually bound in such a way that the obligation of each party has a retroactive effect on the obligation of the other party. The above definition of a *synallagmatic* contract

reflects the theory of exchange, the commutative purpose of the contract, and explains the nature of mutuality through the idea of exchange formalized in the parties' agreement [14, p. 79]. The objective of each party is to obtain a consideration from the other party. The interest of each party can only be achieved if the interest of the other party is taken into account. A party who demands consideration has an interest in its counterparty receiving such consideration from it, in which case the purpose of the contract is achieved.

From the functional point of view, the realization of the defined task has reached a goal at the stage of performance of the contractual obligation and presupposes that the demand for performance of the consideration is possible when one's own performance has been fulfilled (or guaranteed).

The rule of *synallagma* therefore does not apply to the conditions of the contract and therefore does not lead to the right to assert independent claims. The consequences of breach of contract should be considered as a legal response to the failure of one party to fulfill a counter-obligation under the contract. The essence of these consequences is the right of the affected party to refuse to fulfill the claim of its counterparty in the form of an exception directed against its claims if the latter has not fulfilled its counter-obligation (*exceptio non adimpleti contractus*). Section 320 (1) BGB provides that "a person who is a party to a reciprocal contract may refuse their part of the performance until the other party renders consideration, unless the person is obliged to perform in advance" [19].

In contrast to German law, Common law offers a different condition, namely consideration. The latter regarded as a mandatory requisite of an exchange based on free will (bargain). Among the basic principles of the doctrine of consideration is that the countervailing consideration need not necessarily correspond in value to the promised service. Yet it cannot at the same time be completely devoid of value (consideration need not be adequate) [*see* 20]. Consideration to be a "Right, Interest, Profit, Benefit, or Forbearance, Detriment,

Loss, Responsibility" [21]. Thus, Consideration means something of some value in the eyes of the law.

The common law practice of contract, however, in time found itself between Scylla and Charybdis, the opposition of which was caused, on the one hand, by the requirement to protect the moral basis of the contract, the protection of reliance, and, on the other hand, by the need to recognize consideration as a mandatory condition of the contract. The essence of this opposition is to find an answer to the question: is it permissible to recover damages on the assumption that the parties based their relationship on reliance and the promise not supported by consideration in return?

The promissory estoppel proposed as soft law by American contract law provides an effective way of addressing the issue at hand. Restatement Second of Contracts § 90 Promise Reasonably Inducing Action or Forbearance stipulates that –"A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promise or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires" [22], that is, based on considerations of justice.

As rightly pointed out by Annabelle P. Harris, "The doctrine of promissory estoppel forced contract law to acknowledge fairness and morality by attaching potential liability to promises. It had a novel, and arguably grandiose, purpose of preventing injustice" [16, p. 816].

Note that unlike English law, where estoppel initially applied as a defense (*exeptio*) to a promise under the principle – promissory estoppel acts as a shield not a sword – American contract law thus treats said legal instrument as an independent claim that competes with the doctrine of consideration.

Conclusions and prospects for further research. A brief overview of the problems involved in determining the basis of a contract leads to the following conclusion: the Western legal tradition sees the basis of free, mutual self-restraint

in contractual relationships in the inherent moral aspects of obligation of the contracting parties not to behave disloyally to each other. Such obligations assumed by the parties in the process of legal communication voluntarily in accordance with the legal constructions of contract law.

At the same time, contract law binds the mutual limitations of the parties' free will to their respective interests. If the will content of the transaction and the obligation relationship are distinguished, the commutative effect and the corresponding defense against unlawful and unjustified claims are provided for under the rules for *synallagmatic* contracts in the form of defenses (as is the case in the legal systems of Civil law). However, if the provision cannot be separated from the will (consideration) and is not subject to any particular legal evaluation, the provision is considered a requirement of the contract (as in common law). However, even in this case, the conflict between the utilitarian effects of the contract and its moral basis is ultimately resolved in favor of the latter.

Discussion. The attempt made in this paper to draw attention to the fact that all known legal constructions of contract law are based on moral provisions aims to overcome the one-sided view of private law constructions as 'economic instruments' based solely on utilitarian considerations. The further exploration of the influence of moral imperatives as the transcendental basis of the relevant legal constructions leads, in the author's view, to a change in the methodological basis of private law and clarifies the controversial provisions expressed by the initiators of the New Private Law Theory.

References

1. Halabudenko, O. Basic Transformation of Legal Pictures: Purpose and Method of Comparative Law. In: The Workd Picture of Comparatibe Law, William E. Butler and O.V. Kresin (eds.) P. 174.

2. Maloney L. The Commodification of Human Beings, NE. U. L. J. Extra Legal (Fall 2015).

3. Gold A. S., Goldberg J. C. P., Kelly D. B. The Oxford Handbook of the New Private Law. November 2020. doi: 10.1093/oxfordhb/9780190919665.001.0001.

4. Gold A. S. A Moral Rights Theory of Private Law, 52 Wm. & Mary L. Rev. 2011. 1873. URL: https://scholarship.law.wm.edu/wmlr/vol52/iss6/4 (date of access: 30.08.2024).

5. Maxwell J. Ch., Harding M. Private Law, Conscience and Moral Reasoning: Te Role of the Judge. *Melbourne University Law Review (advance).* 2022. 46(1).

6. Babie P.T., Williams C., Viven-Wilksch J., Stewart J. G. Private Law as Morality: A Critique of Peter M. Gerhart's Contract Law and Social Morality. 89 Mo. L. Rev. 2024. URL: https://scholarship.law.missouri.edu/mlr/vol89/iss2/6 (date of access: 30.08.2024).

7. Khalabudenko O. Law, morality and economics: some methodological remarks on basises of subjective rights. *International scientific journal "Internauka". Series: "Juridical Sciences".* 2024. № 4. doi: https://doi.org/10.25313/2520-2308-2024-4-9788.

8. Grundmann S., Micklitz H.-W., Renner M. New Private Law Theory – A Very Brief Introductio. *German Law Journal.* 2022. 23. P. 801–804.

9. Michaels R. Private Law Theory and the "Global Legal Community". *German Law Journal.* 2022. 23. P. 851–861 doi: 10.1017/glj.2022.56.

10. Gold A. *When Private Law Theory is Close Enough. In* Introduction to Methodology in Private Law Theory: Between New Private Law and Rechtsdogmatik. Oxford University Press, 2024.

11. Kuntz T. Against Essentialism in Private Law Theory: Private Law as an Artifact Kind. *Introduction to Methodology in Private Law Theory: Between New Private Law and Rechtsdogmatik.* Oxford University Press, 2024.

12. Savigny F. C. von Das Obligationenrecht als Theil des heutigen Römischen Rechts. Berlin: Veit ,1853. Vol. 1-2.

13. Ihering R. Law as a Means to an End. Boston: The Boston Book company, 1913.

14. Larenz K. Lehrbuch des Schuldrechts. Allgemeiner Teil. Munchen und Berlin, 1957. Bd. 2.

15. Fried Ch. Contract as promise: a theory of contractual obligation. Cambridge, Mass.: Harvard University Press, 1981. P. 162.

16. Harris A. P. The Doctrine of Promissory Estoppel in an Arm's Length Commercial Transaction in Tennessee: A Primer. *University of Memphis Law Review.* 2019. Vol. 49, Issue 3. P. 813-845.

17. Halabudenco O.A. Drepturile patrimoniale. Cartea 2. Drept obligational. Universitatea independentă din Moldova. K., 2014.

18. The law of contract, the general regime of obligations and proof of obligations. The new provisions of the Code civil created by Ordonnance. n° 2016-131 of 10 February 2016. URL: http://surl.li/obseq (date of access: 30.08.2024).

19. Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515).

20. Chitty on Contracts Bd. I (27. Aufl. 1994) Rn. 3-004; Treitel, The Law of Contract (8. Aufl. 1991) 64 f.

21. Currie v Misa (1875) LR 10 Ex 153.

22. Restatement Second of Contracts §§ 1-2, 178. URL: http://surl.li/obsel (date of access: 30.08.2024).