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CONTRACTUAL SUCCESSION LEGAL NORMS FUNCTIONALIZATION ISSUES

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Abstract. Contractual succession, in contrast to succession by law and testament, possesses with a combined structure which include contracts and legal deals with *mortis causa* intention. By this reason, norms, which establish future inheritance in different contracts and deals, do not possess with necessary functionality degree, required for contractual succession substantive law.

Contractual succession norms, which often contain in family law, testamentary law and in obligation law spheres, do not form future inheritance objects taking into account the requirements of these areas of legal regulation.

By this reason mentioned article subject matter related to analyze the impact of norms of different legal nature impact on the objects of legal regulation of contractual succession and, accordingly, problematic situations identification.

Key words: applicable law, contractual succession, inheritance, inheritance agreement, inheritance contract.

Introduction. Legal science distinguishes at least seven different concepts of functionalism across disciplines: finalism, a neo-Aristotelian functionalism based on inherent teleology, adaptionism, an evolutionary functionalism in a Darwinian tradition, classical (Durkheimian) functionalism, explaining institutions through their usefulness for society, instrumentalism, a normative theory of using law for social engineering, refined functionalism, a functionalist method that replaces certain postulates of classical functionalism with empirically testable hypotheses (Ralph Michaels, 2006).

Taking into account these imperatives category *contractual succession legal norms functionalization* firstly presented as the functional method application to clarify contractual succession structure in main essentials – *hereditatis futurae* and *hereditatis probabile*.

Secondly, mentioned category appears as an acceptable and correct abbreviation used to bring together concepts involved in discrete areas of contractual succession legal regulation.

According with mentioned legal science imperatives contractual succession legal norms functionalization means: understanding contractual succession general and private norms system, analyzing contracts, agreements and legal deals, drawing conclusions about the influence of the above-mentioned norms, contracts and deals on the problem of the emergence of contractual succession essential components.

At the present time, the functionalization of relations on contractual succession seems impossible – contractual succession and its leading concept *hereditatis futurae* in the modern sense do not allow this type of relationship to gain the opportunity to progress due to the lack of a correct definition of this legal regime essentials.

The main objective of this study is contractual succession subject matter analyze to give conclusions to minimize the risks for the testator and the heir, as well as for persons associated with them.

To pursuit this goal highlighted following categories:

1) Contractual succession legal structure as a system of contracts and legal deals definition.
2) The institutional structure of contractual succession requirements definition.
3) The individual legal status of persons participating in contractual succession definition.

In appropriate situations norms of *hereditatis futurae* concept must be cleared of risks emanating from the concept *hereditatis probabile*

Note: hereditatis probabile – probabilistic inheritance. (Senāta Civilā Kasācijas Departamenta Spriedumi, 1924).

In particular these risks present, in the possibility of recognition by a competent jurisdiction inheritance rights attributed to donations *inter vivos intentio mortis causa* by both participants in this deal – eventual testator, eventual heir, third parties status in these relations.

In this case, donation is understood as an essential component of *donatio* factor applied as the basis for the testator's expression of will for concluding an agreement with a general clause *mortis causa* with the heir and the subsequent development of legal relations within the framework of contractual succession between these persons.

Note: general clause *mortis causa* is an agreement or basis of agreement between the parties to a main or preliminary contract or legal deal regarding a future inheritance.

In a number of cases contractual succession complex nature also poses an obstacle – coupled with the concept of future inheritance, it creates obstacles to the expression of a person's will to conclude individual contracts.

In particular, Israeli Succession Law, 5725-1965 provides restriction on testamentary gifts (in fact – donation contract *mortis causa*) without this fact confirmation in the testament.

Combination of legal regimes of the *mortis causa* in contracts and a unilateral deal can have ambiguous consequences – in particular in the situation of the cancellation of a will, a gift agreement *mortis causa* will be deprived or, alternatively, may be deprived by a competent regulation.

However, according to the legislation of another state, the deed of gift for *mortis causa* case will be valid, recognized and executed, since the will of the legislator is aimed at creating not so much obligatory relations, but hereditary ones, as it follows from Israeli Inheritance Law.

The instability of this legal relationship described above also follows from the fact that donation is considered by law to be a unilateral deal (Civil Law of the Republic of Latvia, section 1915).

Meanwhile, contractual succession, due to the fact that the basis of this institution is the inheritance contract, is considered as a bilateral deal.

Discussion. Undoubtedly, the right of contractual succession in terms of recognizing a contract of gift of a future thing as a contract of inheritance (Civil Law of the Republic of Latvia, section 1926) will also be subject to instability due to the clash of norms of the law of gift as a "future" right of inheritance.

The main problem is to find the law applicable to contractual succession is the lack of a correct mechanism for linking the law applicable to the instruments of inheritance and the law of obligations through the prism of the legal regulation of the gift agreement as a "future" inheritance contract.

This is manifested in contractual succession, starting with the formation and definition of the subject of this legal relationship, ending with the consequences – the recognition and execution of instruments of contractual succession, both within the legal system of a national state and within the legal field of several states.

An additional obstacle to the correct determination of the applicable law is the dichotomy expressed in fact that the conflict of laws of inheritance and obligation law norms relates the applicable substantive law to the law of different states, or, sometimes, to different legal regulation spheres.

Thus, a situation is possible where, in the same legal situation, the inheritance law of one state and, correspondingly, the laws of obligations of another state are applicable. This situation appears impossible from the standpoint of teleological adequacy – legislators, acting within the national legal system, ensure the linkage institutional system only within individual spheres of legal regulation. The combination of the institutions of inheritance law and the law of obligations in situations where the laws of different spheres of legal regulation are applied within a single state or across several states will undoubtedly create an unmanageable process to determine the applicable law.

The formula for attaching the right applicable to contractual succession must fit into *the right of the place where the act is performed – the right of the place of the consequences of the act* complex concept categories and norms.

The concept of *act* should include and, where necessary, correlate both main agreement and possible discrete legal deals with a unilateral and bilateral nature.

It seems necessary to highlight the specific principles of contractual succession. Undoubtedly, the first principle of contractual succession should be the principle of maximum fulfillment of the testator's will.

Traditionally considered part of inheritance law, this principle will serve as the basis for finding the applicable law in situations involving the fulfillment of inheritance obligations *ex ante* and *ex post.* This principle reasonably limited by public policy, will ensure heirs and third parties future rights and legitimate their interests.

Note:

1) Execution ex ante – the fulfillment of rights and obligations before the moment determined by competent legal regulation before the opening of the inheritance

2) Execution ex post – the fulfillment of rights and obligations after the moment determined by competent legal regulation as the opening of the inheritance

The traditional and primary conflict-of-law principles for determining the applicable law in inheritance relations according the law and testament are the personal law of the testator, which includes citizenship and domicile. The inheritance of movable property and its accessories occurs precisely within these categories.

In turn, the inheritance of real estate occurs in accordance with the rules of conflict of laws *lex rei sitae* – according with location of the inherited property.

Inheritance law, in the case of inheritance by testament, enshrines the principle of the law of the place where the will was made as the applicable law.

This situation cannot be applied to contractual succession. In a situation of contractual succession, the applicable law must be determined differently – binding, applies to contractual succession contains *lex voluntatis* norms – norms, which prescribe the autonomy to choose the applicable law, based on the principle of the voluntarily expressed and realized will of the parties. It should be noted that in the absence of a choice of law clearly stipulated in a contract, the law of the state with which the contract or other instrument mediating contractual succession is most closely connected applies.

Based on the above, it seems necessary to establish a doctrinal and normative definition of the statute of inheritance rights and obligations, or the statute of contractual succession, with the creation of specific legal regulations.

To link the essential components with respect to contracts providing future inheritance norms or other deals containing a hereditary clause.

Since contractual succession involves an institution called with term *"future inheritance* appears that the conflict of laws clause which governs the law applicable to contractual succession contained in formula *lex loci coindentiae testatoris et heredes hereditarium commodum* – applicable law, connected with place or places where coincide the hereditary interests of the heir and the testator.

Introduction of the conflict formula *lex loci coindentiae testatoris et heredes hereditarium commodum* is a justified step due to its regulatory and ordination nature.

This introduction is justified by the fact that the norms of family, inheritance and obligation law are present in contractual succession in an indefinite form.

In turn, the question of the functional content of the formula *lex loci coindentiae testatoris et heredes hereditarium commodum* (ensuring prospective, primary, and restorative interests) is posed not only in theoretical but also in practical terms. The practical aspect of the above formula is that the legislator ensures priority the protection of the interests of the parties involved in contractual succession given case, reduces the degree of aleatory nature of contractual succession.

The inheritance statute, which ensures the issuance of title and executive documents to heirs, is currently subordinated to the categories of *persona loci sitae* and *rei sitae*.

Replacement of the rigid imperatives *persona* and *rei* on elastic collision binding *lex loci coindentiae testatoris et heredes hereditarium commodum* allows to solve many problematic situations.

In current situation of contractual succession in relation to the norms of inheritance and obligation law (in their broad sense), presents competition and subsequent conflict between the concepts *persona legalis intentiones* and *heredĭtas persōnam defuncti sustĭnet*. This conflict cannot be resolved by legal means of the formula *lex specialis derogat legi generali* in its relation to *inheritance is a legal person* concept.

Note: legi generali norms establish contractual succession on inheritance contracts' basis.

This conflict is possible due to the fact that the law applicable to contractual succession is *lex specialis* in relation to the law of inheritance and the law of obligations in regard to *inheritance is a legal person* concept norm.

An additional reason for the conflict between the above concepts lies in the multiplicity of grounds for contractual succession, the ambiguity of the qualification of concepts, and the obligation of law enforcement authorities to apply mandatory norms of substantive law without due reference to execute binding conflict of laws rules.

Seems that the creation and normative consolidation of the corresponding legal order – the right of inheritance obligations with the formula *lex loci coindentiae testatoris et heredes hereditarium commodum* accordance will remove conflict between concepts *persona legalis intentions* and *heredĭtas persōnam defuncti sustĭnet* substantive succession and obligation law norms.

The law of inheritance obligations will accordingly remove the imperatives of universal succession that are inconsistent with contractual succession, introducing into the legal relationship a justified singularity and criteria (markers) for the enforceability and fulfillment of obligations that arise within the framework of contractual succession.

The fundamental value of the law of inheritance obligations, mediated by *lex loci coindentiae testatoris et heredes hereditarium commodum* formula constituted as a sphere of legal regulation of contractual succession is to create a mechanism of justified and regulated singularity, which will allow to contractual succession parties to predict, take into account and implement appropriate rights and obligations strongly inherent to contractual succession.

The doctrinal and practical development of a universal contractual succession statute is also important due to the fact that the inheritance statute of private (civil) law states covers all consequences of the arising and opening of an inheritance.

In turn, the inheritance statute of common law countries concerns only discrete issues of the status of the heir, that is, who is the heir and shares' volume, is due to him, but not issues related to the stages of administration and probation (Haas Ulrich, 2008, 127-150).

By this, it is not possible to create a statute of contractual succession by simple combining its principles and institutes of inheritance and obligation law – a conflict of qualifications is possible.

Lex personalis and *lex rei sitae* bindings, which regulate and apply only to the consequences of inheritance, not regulate the law applicable to the legal deal as a contractual succession forms itself. For example, mentioned bindings not regulate the law, applicable to contracts and deals, mediating the contractual succession, not regulate interests of engaged parties.

The law applicable to inheritance contract is governed by general conflict of laws clause *lex voluntatis*, which leaves the determination of the applicable law entirely to will expression of the parties to the contract, often without taking into account the effect of conflict of laws *lex personalis* and *lex rei sitae* bindings.

Limits the effect of *the lex voluntatis* binding only public order of a national state.

This situation cannot be acceptable.

The meaning of priority in contractual succession is currently unclear. Legal doctrine as understood by Roland Krauze (Krauze Rolands, 1997) does not provide an answer to this question.

Modern legal regulation of contractual succession priority enshrines the provision that the priority of contractual succession is established by excluding inheritance by law and will – this is established by Civil Law of the Republic of Latvia (hereinafter – Civil Law) section 389 provisions.

However, there is a problem with this provision: Civil Law section 642 establishes a provision that in inheritance contracts, the provisions on an integral share must be observed in relation to persons entitled to a compulsory share (Civil Law, sections 392, 399, 423).

Formally, Civil Law 390, 392, 399 and 423 sections' provisions do not directly relate to contractual succession – these sections are located in the section "Intestate Succession" of the Civil Law.

However, by virtue Civil Law section 642 provisions, subjects of the right to an inalienable share have the right to challenge the inheritance agreement.

Due to this circumstance, two questions arise:

1) Are mentioned above subjects of the right to an inalienable share an essential component of contractual succession;

2) Is an inalienable share an essential component of contractual succession;

These questions must be answered positively.

The obligation law established as the basis for priority by the inheritance contract – in this case the right of contestation, as well as the right of claim and the right of inheritance in the form of the presence in the contractual succession of persons entitled to an inalienable share – gives contractual succession, together with the discrete institutions of inheritance by law, a rather important role.

This role is called *organizational right* in this understanding by Robert Sitkov (Sitkoff Robert, 2004, 627-633), Henry Hansmann and Rainer Krakman (Hansmann, Kraakman, 2000, 388-440).

This legal provision results in both the contractual heir and the legal entities having an inalienable share of the inherited property's ownership. This statement balances the interests of the testator and the contractual heir. The testator demonstrates care for his family members, which is consistent with Civil Law sections 84 and 177 provisions.

It should be noted that the right of obligation in contractual succession arises both under the contract and under testament (Civil Law, section1672, Civil Code of the Netherlands section 4.5.3., article 130).

It seems that in this case presents a conflict within the normative act in the understanding by Richard Passler (Passler Richard, 1991, 409-435), Herma Hill Kay (Kay, Herma Hill, 1980, 577-617).

It is unclear what consequences this collision will have.

Category *priority of contractual succession* was adopted by the Civil Law from the Code of Local Laws of the Baltic Provinces.

However, in this normative act an important clarification was made in relation to the law of Kurzeme and Vidzeme (The Baltic Private Law Code, article 1701).

It was precisely in light of this clarification that the priority of contractual succession became truly effective. The second reason for introducing the category of *priority of contractual succession* was undoubtedly the presence of a variety of discrete contractual succession institutes in the Code of Local Laws of the Baltic Provinces (Code of Local Laws of the Baltic Provinces, articles 2481-2524).

With the disappearance of the first reason in the situation of the Civil Law, the category of *priority of contractual succession* acquires the qualities and significance of an evaluative category.

This category, despite the creation of a certain degree of stability and regulatory strength, due to uncertainty and the associated possibility of ambiguous interpretation and specification in the law enforcement process, requires the establishment of criteria for distinguishing between its institutes.

Otherwise, presents a risk of contradictions and conflicts in the application of mandatory norms of inheritance and obligation law in follows situations:

1) Simultaneous conclusion of an inheritance contract (or, contracts) and/or agreement (or, agreements)

2) Qualification and subsequent recognition of a mutual will as an inheritance contract or agreement.

3) Inheritance contract (Civil Law, section 639) essential part interaction with marriage contract (Civil Law, section 114, third part) essentials under situation of future inheritance objects formation.

3.1) mentioned marriage contract or its parts' recognition as an inheritance contract

3.2) mentioned recognized inheritance contract essentials interaction with inheritance contract, concluded firstly essentials

4). concluded or recognized contractual succession contracts' or deals' essential parts interaction with another contracts' or deals' essentials.

In the deontic characteristic of the category of *priority of contractual succession,* the basis for priority must be established. A rule that only establishes the cancellation of inheritance by law or will does not reflect the full nature of contractual succession.

In the modern situation, the priority of a specific form (or instrument of contractual succession) in the modern legal regulation is expressed in the following.

The right of contractual succession, essential to the contract of inheritance, may oppose the right of contractual succession, essential to the marriage contract *mortis causa* (Civil Law, sections 114, 639).

The right of contractual succession, which is essential for a mutual will, may oppose the right of contractual succession, which is essential for an inheritance contract.

The opposition of the norms of the law of contractual succession may also be mutual in the essential components of other contracts and legal deals of contractual succession, establishing the right of authorized subjects for future inheritance.

This confrontation must be resolved by the organic subordination of the legal impact of the essential components of one instrument of contractual succession to the legal impact of the essential components of another instrument of contractual succession.

Subordination must be carried out on the basis of the legal order that is most closely related to the inheritance interests of the persons participating in the contractual succession.

It is in this case formula *lex loci coindentiae testatoris et heredes hereditarium commodum* will ensure interests both under the inheritance agreement in its various forms of existence, and in mutual, corresponding and other forms of joint and mutual testaments that exist in modern inheritance and obligation law norms.

In this study, it seems reasonable to enshrine the priority of contractual succession in the following phrase:

the priority of contractual succession is ensured by the rights and obligations arising from the constituent parts of inheritance contracts that are essential for the future inheritance, as well as other agreements regarding the future inheritance, concluded and/or recognized by the competent law

The term *arising*, interpreted in relation to the term *hereditatis futurae* taken from the history of law (Ann Arbor, 2011, 154).

This term best characterizes the direction of legal regulation of *ex ante* execution, correlating this form of execution with the retroactive imperatives and complex of legal facts that are of fundamental importance for *ex post* execution.

The case law of Anglo-American law requires that retroactive imperatives be taken into account. This statement prescribed by case *James Cable Partners v. City of Jamestown* (Daniel E. Troy, 1998, 42).

In this light, it seems that the concept expressed by norm t*hree types of inheritance can exist together* (Civil Law, section 389) should be specialized for contractual succession objectives.

It is possible to amend Civil Law with section 389^1 and to fulfill this concept with concept as follows:

Three types of inheritance in contractual succession appropriate situations exist simultaneously

This phrase reflects the current state of affairs.

Firstly, persons entitled to an inalienable share exist as a complex concept and is present not only in inheritance by law, but also in inheritance by testament and inheritance contract, or, in prospective, inheritance agreement.

Secondly, inheritance agreement which factually presents in contractual succession as an inheritance contract with private law clauses, which ensure future inheritance norms and property law material objects for mentioned further contracts and deals and its combinations:

1) Marriage contract as an inheritance contract essential (Civil Law, section 114, part three, Civil Law, section 639);

2) Mutual will as an inheritance contract essential (Civil Law, sections 604, 606, 639);

3) A gift of future property which perceived as an inheritance contract and, because of this contains future inheritance clause (Civil Law, sections 639, 1925, 1926).

In case of necessary mentioned norms may be used in reverse functional compositions, alternative notations, appropriate generalizations (*de legi generali* norms formation – authors' note) and appropriate specialization (*lex specialis* norms formation – authors' note).

Note: private law clauses – family law, testamentary law and obligation law norms, which exist in contractual succession and in appropriate situations take part in future inheritance objects' origin.

Because of this mentioned institutes is characterized by a specific right of demand, the changes will ensure a correlation between the previous legal regulation and the introduced changes.

A similar situation existed with regard to the institution of inalienable heirs before changes.

It seems that the basis for the priority of contractual succession in relation to other institutions of hereditary alienation should be the combined expression of will of the testator and the heir, aimed at creating inheritance rights and obligations.

This provision must comply with the provisions on the will (Civil Law, section 1437. German Civil Code, paragraph 133), be specialized in relation to inheritance, and be enshrined in law in the Civil Code and other acts of substantive law in clarifying formulations.

To establish and substantiate the concept of contractual succession as a subject, introduce a category designated by the term *contractual succession – a person in legal intention* or by the term *inheritance by contract subject matter – a person in legal contemplation* (Wilson v. Estate of W. L. Kings. 131 Ind. App. 412 (1960). 170 N.E.2d 63).

The concept expressed by this term will allow the debtor, in the process of fulfilling obligations arising from an inheritance agreement or other contract or legal deal of contractual succession, to settle and execute his obligations before the testator and the testator's obligations to creditors in an optimal manner.

Despite the fact that the category *person* traditionally denotes an individual, this category is applicable for contractual succession.

By virtue *personam defuncti sustinet* principle category *persona,* enshrined in Roman private law, also stipulates the presence of a corresponding expression of will.

In the case of inheritance by law or by will, the heir expresses his will to accept or reject the inheritance. In the case of contractual succession, the heir cannot refuse the inheritance. Due to this circumstance, the legal intention, mediated by a limited expression of will, must be regulated by optimal for debtor law – by Civil Law section 1508 provisions.

Since the basis of contractual succession is an agreement, from the rules of which, firstly, no deviation is allowed, and secondly, through contractual succession during the validity of the agreement, not only rights can be acquired (Zekoll, Matthias, 2005, 286), but also property (Civil Law, section 646), the debtor must be insured against possible losses (Civil Law, sections 1593, 1594), such as a reduction in available property and other encumbrances.

The issue of the moment of transfer of ownership rights to movable property inherited in a situation of contractual succession has not been resolved.

From the point of view of inheritance law (in the situation of inheritance by law and by testament), the actual acceptance of the inheritance (Civil Code, section 691) occurs at the moment the debtor performs certain actions specified by law. Legal doctrine (Briedis, 1939) and legal practice (Judgment of the Department of Civil Cases of the Senate, case SKC-382/2007) in relation to inheritance, reasonably confirming the principle of continuity as it understood by Janis Zariņš (Zariņš Jānis, 1935), contribute to the consolidation of this interpretation.

This position is accepted and valid for both intestate and testamentary inheritance.

According to the inheritance agreement and other instruments of contractual succession, it is possible to acquire future inheritance (Civil Law, section 639, Israeli Inheritance Law, article 8) and, accordingly, its fruits (Civil Law, sections 855 and 856).

Due to this circumstance the principle of continuity must be respected in relation to things and rights that may not exist at the time of acceptance of the inheritance.

Such things may be shares, stakes in an enterprise, bills of exchange, bonds, interest for use, legal interest, and other objects, the issue and emission of which must be agreed by with the members of the company or, in some cases, with their majority (Commercial Law of the Republic of Latvia, section 87).

The heir, by virtue of the period specified in the Civil Law (Civil Law, sections 693, 701), does not have access to these objects. In this situation contractual succession acquires a specific nature, which regulation is determined by Commercial Law (Commercial Law of the Republic of Latvia, sections 191, 238, 238[1]), and the Civil Law specific to inheritance agreement. Inheritance agreement in this case presents as an inheritance contract (Civil Law, section 639) and in private law norms addition, concerned in Commercial Law of the Republic of Latvia.

Thus, Civil Law sections 980, 991 and 1034, which regulate the commencement (Civil Law, section 980) and the termination of property rights (Civil Law, section 1034) cannot be used in this situation.

In contractual succession, developing its object and subject matter, seems necessary to use the Law of Requisite Variety, prescribed by William Ross Ashby.

Contractual succession is a complex, dynamically growing entity and, according to William Ross Ashby (Ross Ashby, William, 1957, 206), the entropy of a system of contractual succession can increase when the elements included in the system behave as independent random variables, and the unambiguity of the system control is lost (Ross Ashby William, Jeffrey Goldstein, 2011).

In the situation of contractual succession, this effect may manifest itself in the situation of inheritance of obligations arising from contracts that correlate with the main contract and with the unilateral legal deals.

The concept of contractual succession must take into account a specific institution called *contracts to leave property by will* (Sawyer Caroline, Spero Miriam, 2015, 142).

The complex nature of this legal phenomenon requires research using methods of deontic logic.

This reason is contractual succession private law norms often denote different legal basis to arise hereditary mass property law objects.

This moment is essential for inheritance contract or/and agreement consequences in regard for future inheritance ground.

Especially it important in Great Britain statute law: Richard Edwards and Nigel Stockwell points out that *Inheritance (Provision for Family and Dependants) Act 1975 article 11 are quite controversial*. This article rule allows the court *modify the consequences of the contract if the purchaser has not given or promised appropriate material satisfaction at the time of conclusion of the contract* (Edwards, Stockwell, 2005, 160-161).

Because term *contractual succession* implies a hereditary process, which beginning and end are not clearly defined, in order to select the necessary set of legal facts characteristic of the beginning and end of the legal relationship, it seems necessary to apply a criterion based on the category expressed

by the term *correlation caused by differences in the determination of contractual succession priority in relation to applicable law* (Steinbuch Robert, 2008, 52).

This reason is *lex specialis* norms, which legally did not, established regulation regarding to contractual succession under situation of applicable obligation law private norms.

Note: lex specialis norms establish contractual succession on the inheritance contract basis simultaneously with private law norms, arising from discrete contracts, agreements and deals which exist as essential parts of norms, prescribing future succession.

Establishing *lex specialis* is carried out on the basis of the essential components of the norms that arise as a result of the qualification of the norms of contractual succession and the circumstances that are essential for the inheritance process – when analyzing *legi generali* norms and their application to *lex specialis* norms.

As a result of this process, a set of legal facts essential for contractual succession may arise both in inheritance and in other areas of legal regulation – family and obligation law.

By this reason the moment of commencement of the legal relationship mediated by above mentioned areas of legal regulation varies.

Due to this circumstance, dependence on the normative definition of priority for one of the areas of legal regulation, the correlation of *legi generali* must be determined in relation to *lex specialis*.

Accordingly, a model of harmonization of the law of obligations institutes corresponding to contractual succession in relation to succession law institutes should be derived by instruction, denoted above.

Otherwise, exists a risk of the emergence of non-corresponding, conflicting legal relationships with an uncertain legal nature and, accordingly, uncertain prospects.

In contractual succession, there is a need to emphasize the objective conditions of the formation, existence, and development of the subject matter and object of this institute.

Mandatory substantive law norms, lacking a uniform conflict-of-laws framework for contractual succession, and the incompleteness of existing norms – one set of conflict-of-laws frameworks governs the applicable inheritance law, another governs the applicable law of obligations – create a contradictory picture of the subject matter and object of contractual succession.

This is evident in all contractual succession agreements and deals, starting with the means of ensuring the interests of persons participating in contractual succession, ending with the problem of determining the closest connection between the essential components of a legal relationship and a specific legal order, the closest relationship and, simultaneously, in legality of the legal relationship itself.

To solve these problems, emphasis must be expressed in the normative definition of the moment of commencement of the application of the rules of substantive law inherent for a specific instrument of contractual succession, as well as the normative definition and consolidation of the termination of the effect of the rules of the applicable substantive law.

At present, in contractual succession exists an erroneous assumption that certain deals can be used to create objects of inheritance law.

This statement refers to the marriage contract *mortis causa*.

In this case, *lex personalis* introduces into contractual succession an additional element, in addition to *hereditatis futurae* concept, risk.

Lex personalis attributes the individual legal status of the testator to the law of the country of citizenship or residence. Because of this applicable inheritance law must take into account family law norms involved in the formation of the instruments of inheritance. If the testator holds dual or multiple citizenships, the issue of choosing the applicable family law is further complicated.

For the heir, these circumstances may entail unfavorable consequences in the form of a reduction in the size of the inheritance estate. The cause of which will be the effect of the imperative norms of family and inheritance law, affecting the formation and development over time of rights of claim on the part of persons included in the category of inalienable heirs and persons entitled to inalienable, additional and other forms of shares in hereditary mass.

In contractual succession is not observed *donatio* principle in its interpretation as a special relationship between the testator and the heir under agreement, contract or other contractual succession instrument.

Donatio as an instrument of the donation law has passed to contractual succession law must be objectified in the form of releasing the debtor (heir under contract or, in necessary cases, agreement) from the risks associated with the impact onward the object of contractual succession by influence *inheritance – a legal entity* concept norms in its temporal manifestation in regard to Civil Law sections' 1508 prescripts.

Unstable, especially in the situation of mutual wills and marriage contracts *mortis causa* obligation law inevitably lead to the creation of situations which are not characteristic of the law of inheritance obligations in regard to Civil Law section 1508 claims.

Conversely, may arise situations and, consequently, objects characteristic of the law of obligations arising from family law which are inconsistent with *de lege ferenda* inheritance rights and interests of the parties involved in general process (Civil Law, section 639) and specific processes (Civil Law, section 639 impact onward to Civil Law sections 114, 606, in private cases – Civil Law section 1926) of contractual succession.

A special relationship (donatio) must contribute to the creation of the heir's prospective (supporting) interest. The heir fulfills inheritance obligations that have a monetary equivalent established as an essential component of the specific instrument of contractual succession.

Hereditary claims from third parties based on other laws and consistent with *inheritance – a legal entity* concept without mentioned above norms' participating in future inheritance object creation leads to a substantive law conflict based on the competing interests of the parties involved in general and specific contractual succession processes. This example based on the various legal grounds application, necessitating conclusions regarding the legality of these claims.

The main issue in this situation is the problem of the grounds for recognition by the heir appointed by an agreement or other instrument of contractual succession.

In this case, the discussion about the grounds that require recognition as an heir appointed by an agreement or other instrument of contractual succession should be conducted on the admissibility and relevance of these grounds.

This argument additionally proofs, that in contractual succession, there is a need to emphasize the objective conditions of formation, existence and development of the subject matter and object of this institute.

Mandatory norms of substantive law, not provided with unified conflict-of-laws collision binding precisely for contractual succession, and the incompleteness of existing ones – *lex personalis* and *lex rei sitae*, force involved persons to divide applicable law norms, create dichotomy. This dichotomy sets to discrete contractual succession collision law regulation – one group of conflict-of-laws bindings regulates the applicable inheritance law, another – the applicable law of obligations.

This fact creates a contradictory picture of contractual succession subject matter and object.

This is manifested in the instruments of contractual succession, starting with allowed devices of ensuring the interests of persons participating in contractual succession, ending with the problem of determining the closest connection of the essential components of the legal relationship with a specific legal order, the closest relationship and the legality of the legal relationship itself.

To solve these problems, emphasis must be expressed in the normative definition of the moment of commencement of the application of the rules of substantive law inherent to a specific instrument of contractual succession, as well as the normative definition and consolidation of the termination of the effect of the rules of substantive law.

In contractual succession there is a misconception that certain instruments can be used to create objects of inheritance law.

This statement refers to the marriage contract *mortis causa*.

With regard to contractual succession, applies *inheritance a legal entity* concept. With regard to an heir under a contract or other instrument of contractual succession, the effect of this instrument must be specialized to norms, prescribed by Civil Law section 639 and, simultaneously, to norms, prescribed by Civil Law section 114 norms as a Civil Law section 639 essential part norms.

A solution that will limit the negative effect of the imperative *inheritance a legal entity* in relation to the heir appointed in accordance with the instrument of contractual succession by family law norms should be *hereditatis probabile* imperative.

This imperative, according to the proposed assumption, implies that the fruits and profits of the property, which recognized as a contractual succession instrument, prescribed by Civil Law section 114 norms as a Civil Law section 639 essential part norms may be subjected by hereditary mass, which regulation ensured by specific escape devices, essential for contractual succession family law private law norms, prescribed for Civil Law section 639 by Civil Law first section.

In turn, the transfer of fruits by the contractual heir to heirs on other grounds will not harm the inheritance rights and interests of the parties to the inheritance agreement or other contractual succession instrument.

Undoubtedly, *hereditatis probabile* imperative introduction will reduce aleatory and fiduciary degree nature of the agreement, based on Civil Law sections 114 and 639.

The second solution for problem mentioned above may be the allocation by the testator to the claimants on other grounds of a property provision, defined as a legate with an essential condition that the claimants nullificate and, in proper situations, renounce their claims in relation to the inherited property, defined as the object of a specific contractual succession deal.

In this case, it is necessary to define and interpret legates' content in relation to a specific norm of contractual succession.

The traditional legate definition as property allocated from testators' property is quite problematic and in a number of cases is unacceptable for mentioned contractual succession situations.

The heir under contract acquires inheritance rights, including the right to property, after a certain period of time, and the normative legate definition (Civil Law, section 500) will entail the allocation to claimants individually undefined testators' property.

This undoubtedly damages the inheritance rights and interests of the heir under the contract or other instrument of contractual succession, prescribed by Civil Law sections 114 and 639.

This may raise property conditional claims against claimants to compensate property contribution, which carried out by the heir and defined as an essential component of the contractual succession concrete agreement or deal.

The third option for resolving situation under *inheritance is a legal entity* concept norm is gift allocation to contractual heir ensuring simultaneous conclusion between him and testator for gift further allocation to satisfy claimants' legal interests.

This deal must be completed and executed during the lifetime of the testator. Otherwise, donation agreement may be classified as an inheritance contract (Civil Law, section 1926, second sentence).

Important in this situation is that donation *inter vivos to intent mortis causa agreement* deal will be acceptable for recognition and enforcement in certain jurisdictions which legal regulation doesn't contain contractual succession and contractual heir, respectively.

Summing up the issue of clarifying the role of inheritance and obligation law and their relationship in the formation of the legal regulation applicable to contractual succession, it seems necessary to cite the words of the French scientist, the founder of the classical theory of statutes, Bertrand d' Argentré *(d'Argentre Bertran)*.

These words quite accurately describe the situation that is currently developing regarding institutional interaction in the legal regulation of contractual succession:

coutume allowed to donate, bypassing the legal heir, no more than one third of the entire property. Any person with clear mind can donate a third of his property to another person (Bertrand d'Argentré, 1621).

In other words, individual legal status of the natural person, based on legal regulation within a certain territory, includes the owner's rights to perform only authorized actions of a certain nature – to dispose with his property only in a certain volume.

The standpoint of modern law, this possibility does not raise any doubts in a situation when property owner outstand its authorities as a subject of the right of inheritance by law or will.

A different situation exists if donor exists as a subject of inheritance right in the situation of a concluded inheritance agreement with donation *inter vivos to intent mortis causa agreement* clause or other contractual succession institute with similar or identical essential parts.

In this case, testator has voidable rights to alienate the property law objects' or, in some cases, testator does not have the right to alienate the property law objects' authorized his actions as a subject of inheritance law without heirs' consent.

However, discrete laws allow alienation. Civil Law states, that

an inheritance contract does not restrict the right of an estate-leaver, even though such may not have been separately contracted for, provided that he or she himself or herself has not directly relinquished such rights to act during his or her lifetime with his or her movable property and even, in reasonable quantities, to make a gift of it (Civil Law, section 648)

Swiss legislator allows in an identical situation inheritance agreement property law material objects' complete alienation. Swiss Civil Code stipulates that

the testator may, by contract of succession, undertake to another person to bequeath his or her estate or a legacy to that person or a third party. He or she is free to dispose of his or her property as he or she sees fit (Swiss Civil Code, article 494).

The term *dispose* applicable law can refer to paid or gratuitous property alienation.

For this reason, the rules of inheritance law, when concluding an inheritance agreement, are subject to the provisions of the Civil Law of the Republic of Latvia and the Swiss Civil Code, as burdened by obligation law norms, which application method onward the heir under agreement but also to third parties is not cleared.

This raises a dilemma regarding the status of the party in these contracts. The third party may be either the heir under the contract, or another person who has no relation to the heir under the contract.

This state complicates the legal relations arising as a result of the conclusion of an inheritance agreement fixed in this form.

The right of donation in this situation has a dichotomy with respect to the applicable rules of the law of donation.

The right of donation, defined as an essential component of the right of contractual succession, exists in the norms of this regulation in two forms:

1). donation made before the opening of the inheritance

2). donation made after the opening of the inheritance

The status of the persons involved in this form of donation, legal status of the subject matter of this donation, its content, name of the agreement, as well as its consequences are determined by these forms.

The complete or partial alienation of property by the owner is permissible only in the case of inheritance by will, when the will is revoked by the testator. In the case of an inheritance contract, such deal is impossible and requires its content correction. This content correction and contractual succession norm functionalization must be achieved by identifying specific legal regulation and implementing a specific legal statute – the statute of contractual succession.

This statute should establish specific legal regulations regarding donation law under situation of a concluded contractual succession contract or agreement.

Conclusions.

1. Contractual succession legal structure is a system of contracts and legal deals, the essential components of which are subject to legal regulation by norms that, by their legal nature, are intended to govern relations which mainly lie outside the scope of inheritance law. Mentioned system of contracts and deals possesses with open structure, in an appropriate situations contract and deals essentials may be combined and regrouped.

2. As a result of this circumstance, contractual succession norms contain significant discretion.

3. The institutional structure of contractual succession does not meet the requirements of the norms establishing entitled persons right to inheritance.

4. The individual legal status of persons participating in contractual succession cannot be clearly established.

References:

1. Israeli Succession Law, 5725-1965. With amendments.
2. Civil Law of the Republic of Latvia. Enacted: 28.01.1937. In force: 01.09.1992. Published: Valdības Vēstnesis, 41, 20.02.1937. With amendments.
3. Commercial Law of the Republic of Latvia. Enacted: 13.04.2000. In force: 01.01.2002.
4. Published: Latvijas Vēstnesis, 158/160, 04.05.2000. With amendments.
5. Inheritance (Provision for Family and Dependants) Act 1975. 1975 Ch. 63. Enacted and in force: 12.11.1975. With amendments.
6. Swiss Civil Code. Adopted on May 28, 1904. Entered into force on December 10, 1907. Published: BBl 1904 IV 1, 1907 VI 367. With amendments.
7. Ralph Michaels. The functional method of comparative law. Duke Law Scholarship Repository // https://scholarship.law.duke.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/2033/&path_info=Functional_Method_of_Comparative_Law.pdf (09.12.2025).
8. Senāta Civilā Kasācijas Department Spriedumi // Tieslietu Ministers Vestneša pielikums . – Riga : Jūl. Petersona spiestuve, 1924.
9. Sitkoff Robert H. An Agency Costs theory of trust law // Cornell Law Review, 2004; Vol.89.
10. Hansmann Henry. Kraakman Reiner. The Essential Role of Organizational Law // The Yale Law Journal, 2000: Vol. 110.
11. Passler Richard G. Comparative Impairment: Louisiana's New Methodology for Resolving Conflicts of Law // Louisiana Law Review, 1991; Vol.52. Nr. 2.
12. Hay Herma Hill. The Use of Comparative Impairment to Resolve True Conflicts: An Evaluation of the California Experience // California Law Review, 1980; Vol. 68. Nr.4.
13. The Baltic Private Law Code. Article 1701. The right of contractual succession has priority over the right of inheritance by will. The two aforementioned rights of inheritance have priority over inheritance by law. In Vidzeme, these three inheritance rights may coexist on the basis that one specified portion of the entire estate (e.g., half, a third, a quarter, etc.) is due to the testamentary heirs, the second portion to the contractual heirs, and the third portion to the legal heirs. In Kurzeme, all three types of inheritance may also coexist simultaneously; however, statute inheritance combining is not permitted. The Baltic Private Law Code. Rīga, 1928.
14. Some Doubts and Questions in the Law especially of Scotland as well, some decisions of the lords of Council and Sessions. Ed. by Sir John Nisbet of Dirleton .– Ann Arbor, 2011.
15. James Cable Partners v. City of Jamestown. Tenn., 822 F. Supp. 476 (M.D. Tenn. 1993).
16. Daniel E. Troy. Retroactive Legislation. Washington: the AEI Press, 1998.
17. Wilson v. Estate of W. L. Kings. 131 Ind. App. 412 (1960). 170 N.E.2d 63.
18. Ross Ashby, William. An Introduction to Cybernetics. London: Chapman and Hall, 1957.
19. Zekoll Joachim., Reimann Matthias. Introduction to German Law. 2nd ed. Wolters Kluwer, 2005.
20. Briedis V. Mantojuma pieņemšana un mantojuma atraidīšana. Riga, 1939.g.
21. Judgment of the Department of Civil Cases of the Senate, case No. SKC-382/2007.

22. Zariņš J. Mantojuma dalīšana tiesas ceļā . Rīga , 1935.g.
23. Ross Ashby William (with an introduction by Jeffrey Goldstein). Variety, Constraint, and the Law of Requisite Variety// E: CO, 2011; Vol. 13.
24. Sawyer Caroline. Spero Miriam. Succession, Wills and Probate. 3rd ed. Abington: Routledge. 2015.
25. Edwards Richard., Stockwell Nigel. Trusts and Equity. 7th ed. Harlow: Longman, 2005.
26. Steinbuch, Robert. An Empirical Analysis of Reversal Rates in the Eighth Circuit during 2008 // Loyola of Los Angeles Law Review, 2009; 41(1).
27. Haas Ulrich: Die Europäische Zuständigkeitsordnung in Erbsachen. Jud/Rechberger/Reichelt, Kollisionsrecht in der Europäischen Union. Wien, 2008.
28. Bertrand d'Argentré. Commentaire des customs de Bretagne, Paris, 1621.