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CONTRACTUAL SUCCESSION LEGAL NORMS FUNCTIONALIZATION ISSUES. SECOND PART

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Abstract. Mentioned article analyze contractual succession norms issues in regard to applicable law norms in regard to *de lege ferenda* legal relations in contracts and deals with *mortis causa* intention and consequences. To denote *mortis causa* contracts and deals legal basis and consequences by this moment contractual succession doctrine and practice uses *lex personalis* and *lex rei sitae* collision bindings. However, mutual and joint wills presence in contractual succession, as well as inheritance contract institute availability, this coexistence for applicable law denoting procedure goals force to involve in this process *lex voluntatis* collision binding.

Due to this circumstance article gives analyze *lex voluntatis* collision bindings' insertion into contractual succession law norms for mentioned norms' formation issues.

Article finishes with model code suggestion.

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

Introduction. Civil Law of the Republic of Latvia (hereinafter – Civil Law) section 639 states, that

Contractual inheritance shall be founded by contact pursuant to which one party grants the rights to his or her future inheritance or its part to another party, or several parties grant such rights to each other. Such a contact is termed an inheritance contact.

Terminology set forth in this section leads the interpreter to conclude that contractual succession is established solely by an inheritance contract. This conclusion basis is the provision stipulated in this section regarding future inheritance.

At first glance, this statement has a complete, closed structure.

However, this definition complete structure is based according with Civil Law section 1511 second sentence requirements.

For contractual succession legal regulation this statement regulates essential, but only discrete part of this institute – inheritance contract.

This statement in regard to contractual succession complexity is incomplete and does not reflect contractual succession full structure.

Contractual succession legal regulation needs branched structure.

Mentioned structure provided by Civil Law section 639 provisions together with Civil Law section 1511 first sentence provisions.

Civil Law section 639, together with Civil Law section 1511 first sentence provisions creates the basis for inheritance agreements' uprising and further normative and doctrinal recognition – mentioned section states, that

A contract within the widest meaning of the word is any mutual agreement between two or more persons on entering into, altering, or ending lawful relations.

Inheritance contract in its widest meaning forms inheritance agreement – term *widest meanings* under mentioned Civil Law section context defines private – family, testamentary and obligation law norms and their combinations, which denote inheritance agreements' compound and essentials.

Without a doubt, under these circumstances statement *contractual inheritance shall be founded by contact* does not reflect categories' *the rights to future inheritance* and *part to future inheritance* pri-

vate norms essentials, which regulate inheritance objects' uprising and existing according with indirect forms and their consequences principal components for mentioned categories legal basis arising.

In regard to contractual succession legal relations' multiple objected presence and for norms' functionalization purposes this institute should to be constructed with its own regulation, contractual succession statute.

It should be noted that the last formulation of the title of the statute – contractual succession statute – seems more accurate due to the reflection of the essence of the legal relations of contractual succession – some legal acts recognize as contractual succession institutions not only alienation contracts and agreements concluded with *mortis causa* clause, but also, by *re Dale* and *re Goodchild* statements' motives, joint and mutual wills.

Decision in *re Dale* case states, that

To the effect that where two individuals have agreed as to the disposal of their property and have executed mutual wills in pursuance of the agreement, on the death of the first ("the first testator"), the property of the survivor ("the second testator"), the subject matter of the agreement, is held on an implied trust for the beneficiary named in the wills (Pawlowski, 2023)

Decision in *re Goodchild* states, that

Two wills may be in the same form as each other. Each testator may leave his or her estate to the other with a view to the survivor leaving both estates to their heir. But there is no presumption that a present plan will be immutable in future. A key feature of the concept of mutual wills is the irrevocability of the mutual intentions. Not only must they be binding when made, but the testators must have undertaken, and so must be bound, not to change their intentions after the death of the first testator (Pawlowski, 2023).

The legal nature of the legally binding agreements underlying mutual wills is as follows.

The survivor undertakes to abide by the terms agreed upon by the parties and not to change them in accordance with his or her own (unilateral – author's note) will. Parties to mutual wills agree not to change or revoke the terms and conditions of their joint will without the consent of the other testator. It is stipulated that once the first testator dies, their part of the agreement is fulfilled. The other party cannot terminate the agreement by changing their will, even if changes in life circumstances after the death of the first partner justify such changes.

The answer to this problem should be a model law.

Because of these circumstances model law should to contain following essentials: contractual succession law definition, inheritance agreement essential terms under Civil Law sections 639, 1511 requirements, bilateral inheritance agreement or other legal deal legal nature and consequences under provisions set out in Civil Law section 639, unilateral dispositions, bilateral dispositions, bilateral dispositions' admissibility limits, bilateral dispositions irrevocability definition.

Simultaneously model law should to contain essentials and application of marital rights, donation rights, and testamentary inheritance rights in determining inheritance share value share in inheritance contracts, agreements and legal deals involving contractual succession conditions.

Discussion. Contractual succession law fundamental tenet is testator's family members' protection. It is precisely to implement this principle that the institutions of compulsory shares and inalienable heirs were developed in inheritance law. In contrast, the law of obligations prioritizes freedom to enter into contracts, and the well-known antagonism between these categories raises the question of how the institutions examined in this article will interact in the context of an inheritance agreement, as research on this topic is virtually nonexistent.

Further analysis is intended to fill this gap.

The complexity of creating a statute of contractual succession is manifested by the fact that contractual succession institutes contain both the inheritance statute of private international law and the obligatory statute.

As a result of this circumstance, the categories defining the individual legal status of a person, the subject of legal relations, the form of legal acts, and other essential components of contractual succession institutions have different content.

An example in this case is the form of the institution of contractual succession: according to the provisions of regulatory acts, the aforementioned inheritance agreement is concluded in notarial form (Civil Law, section 643).

In turn, mutual wills can be drawn up in simple written form, since in this case the notarial form of the legal act is optional.

In this case arises a question: how notarial form as an essential part of *de lege ferenda* law will be recognized by competent law and, in continuation, by contractual succession legal order in the event of recognition of joint, reciprocal or mutual wills as an inheritance contract.

Will this recognition should be legally binding?

However, it is precisely the simple written form of this legal act that can become a stumbling block in the event of a dispute or questions of implementation in the legal system of another state.

According to Civil Law section 606 provisions, a mutual will may be recognized as an inheritance contract with all the ensuing legal consequences; for example, an interested party may request through the court that this legal act should be declared as invalid due to a defect in form.

In this situation mention for this recognition importance for *de lege ferenda* law objectives for future inheritance norms may be rejected accordingly with public policy grounds (Civil Law, section 24).

How the question of applicable inheritance and/or obligation law will be resolved remains open.

Contractual succession contains a large number of similar conflicts in the situation of entering into legal relations on contractual succession, implementation and application of contractual succession norms which denotes with discrete nature secured *lex voluntatis* collision binding norms.

In this context term *discrete nature* means family law, testamentary law and different obligation law norms, which arose at the moment when parties enter into contractual succession relationships.

In turn, contractual succession statute creation and its consolidation should eliminate these problems with admissibility limits instruments.

Contractual succession statute must lay down the functional architecture of its own legal system, starting from this institute formation including the system of its sources, ending with the development of models of law enforcement and corresponding forms of justice.

Of course, contractual succession statute must undergo adaptation from the idea of law to reality. Only in this case contractual succession statute become a full-fledged basis for establishing a legal situation that corresponds to the real legal order and on this path this article should serve as the basis for its formation.

Contractual succession statute is a construction with a multifaceted structure.

Succession law, prescribed inheritance by will uses three conflict-of-laws bindings to determine the applicable law – *lex personalis* and *lex domicili* adopted to determine the legal status in movable property inheritance consequences, while to determine the applicable law in the situation of inheritance of immovable property, conflict binding *lex rei sitae*.

The main conflict of laws clause used in relations arising from obligation law constituted by *lex voluntatis* formula.

Contractual succession statute should to ensure correct norm functionalization should to combine mentioned formulas.

It seems reasonable to assert that the law applicable to contractual succession is in the plane of combining the above-mentioned collision bindings.

Based on this circumstance, for this analysis purposes, two problems were selected: an analysis of the sources of law in relation to contractual succession and an attempt to determine the legal order applicable to contractual succession.

An additional reason for the derivation of the statute of contractual succession is that the law applicable to the contract is determined by conflict binding *lex voluntatis* – freedom to conclude a contract, the main principle of which in the doctrine is the principle called *closest connection principle*.

The principle of closest connection, in turn, is mediated by the link between the contract and the law of the state with which the contract is most closely connected.

In this regard, it seems necessary to mention that legal doctrine indicates that

“closest connection” adjustment in international inheritance law is used extremely rarely and entails, in turn, the need to delimit it from the place of preferential residence (Haas, 2004).

Thus, the main task in developing the statute of contractual succession is to achieve a reasonable and logical separation or linking of the personal law of the testator and the law of the state with which the contract *mortis causa* is most closely connected.

An inheritance may be opened in several states.

Under these circumstances, closest connection principle should provide exceptions for *lex personalis* and *lex rei sitae* collision bindings.

The traditional and main principles of conflict of laws for determining the law applicable in inheritance relations are the personal law of the testator, which includes citizenship and/or his domicile.

The inheritance of movable property and its accessories occurs precisely taking into account the categories of the personal law of the testator.

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

However, this system is not universally applicable – German law applies the principle of unitary inheritance – if testators possesses with German citizenship, his personal law under moveable and immovable property succession underlined to German law (Introductory Act to the Civil Code, article 5).

In the case of inheritance by will, succession law, as the law applicable to inheritance, enshrines the principle of the law of the place where the will was made.

However, in contractual succession situation, the applicable law must be determined differently – law, prescribed by *lex voluntatis* collision binding must be applied to contractual succession law norms including law, prescribed by *lex personalis* collision binding.

Lex voluntatis – collision binding, prescribed autonomy of choice of law, based on the principle of the voluntarily expressed and realized contractual succession involved parties’ independence of choice, manifesting their will with maximum extent.

Lex voluntatis and *lex personalis* collision bindings’ norms should denote involved parties’ will expression with *lex loci coindentiae testatoris et heredes hereditarium commodum* formulas’ norms.

In opposite case relation, which arises from contractual succession, may be noted as a relation with will expression, which made without choice of law, which prescribed closest connection principle.

It should be noted that in the absence of a choice of law stipulated in the contract or other contractual succession deal, the law of the state with which the contract mediating contractual succession is most closely connected applies.

However, this act may not comply *lex loci coindentiae testatoris et heredes hereditarium commodum* formulas’ requirements, enacted in *lex locus actus* collision binding.

It is quite certain that denoted by applicable law autonomy of choice and the place of drawing up a will or another contractual succession contract or deal, possesses with logical continuation *lex locus actus* collision bindings’ imperatives.

This may result if contractual succession contract or deal involved parties choose the applicable law in accordance with abovementioned binding rules.

However, if contractual succession joint choice law is essential to a discrete *mortis causa* disposition, distinct from the choice of law, applicable to a complete situation of a unilateral or lateral legal

deal, which involves will expression for only one party – only for heir or testator – this situation lead to will defect.

By this reason, the place, acknowledged as a place where contractual succession contract or deal is concluded will differ from the place where mentioned contract is drawn up *de facto*.

Accordingly, norms, which essentials to *lex personalis* and *lex rei sitae* collision bindings will not match with norms, which essentials to denote applicable law to contractual succession contract or deal with *lex voluntatis* collision binding.

Consequently, involved person making the choice of law, or applying the law chosen by the parties under mentioned situations, faces with this choice appropriateness and legitimacy.

The law applicable to testamentary succession as a contractual succession essential in mutual wills as a contractual succession deal conditions and the law, applicable to contractual succession obligations in wide sense – under situation of testamentary succession as a part of contractual succession have different characteristics and application conditions in regard to *lex personalis*, *lex rei sitae* and *lex voluntatis* collision bindings and their acceptable combinations.

Analogical situation presents under situation of inheritance by inheritance by contract, concluded under Swiss Civil Code article 494 rules.

Person, entering into a contractual succession relationship must take into account the fact that an inheritance contract concluded in accordance with the rules of the Swiss Civil Code, which is valid with respect to Swiss law due to its form, content, and consequences, may not be recognized by another state legal system.

The reason is the ambiguity of the legal formulations that define the essential components of this agreement.

Since in the case of this agreement it is necessary to determine the applicable law in accordance with Swiss Federal Act on Private International Law articles 86-96, 112, 113, 116, 117, 119, 124. With mentioned article dispositions conflicts possible even due to a clash of legal norms within this act.

To further illustrate the problematic of the law applicable to contractual succession, it seems appropriate to model the situation using the example, based on object qualification under contractual succession institutes in Austria and Switzerland.

The main sources for analysis, in addition to the Swiss Federal Act on Private International Law, will be Austrian Act on Private International Law, General Code on Civil law (ABGB) and some provisions of the Swiss Civil Code will also be examined.

This analysis is quite important. In the introductory laws and laws on international private law according to Professor Henry Battifol (*Battifol, Henry*) contains *conflict of laws rules that refer to the law of the forum* (Battifol, Lagarde, 1993).

Before the changes that took place in 2014, the contract mediating contractual succession was set out in General Code on Civil law (ABGB) paragraph 1217 as follows:

A marriage contract is an agreement concluded with the purpose of respecting the marriage union, for the protection of property rights, and especially of its objects: a dowry, a widow's share of the inheritance... an inheritance agreement or a life-long use of property with the intention of supporting the widow in case of death.

In turn, the inheritance agreement in the Swiss Civil Code is fixed in the following form:

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. However, testamentary dispositions or gifts that are incompatible with obligations entered into under the contract of succession are subject to challenge. (Swiss Civil Code, article 494).

In light of these rules, it is unclear how the phrase “*he or she is free to dispose of his or her property as he or she sees fit*” will be interpreted. Collision bindings’ *lex voluntatis* rules fix, that this formulation can be applied as an essential to donation agreement/contract law, or to inheritance contract law. Also in this situation, according Federal Act on Private International Law article 19 provisions, collision bindings’ *lex personalis* and *lex rei sitae* rules can split mentioned relation in – in the absence of *lex voluntatis*, this formula justified excluding or this collision bindings’ norms’ validity ignoring, this relation should be regulated by the law determined by the objective location of the contract, based on the conflicting norms of the legal system of the competent authority.

But term *objective location of contract* content also can be different.

Donation contract may be concluded in country, which legal order control property, which is defined as donation contract property as an essential component of inheritance contract.

Whereas inheritance contract can be concluded in country, which legal order control property, which is defined as an inherited property, property which has closest connection with inheritance contract.

In the situation of an applicable law denoting under cross-border contractual succession obligation, in the presence of the above mentioned formulations, the parties to the contract are faced with a dilemma: the law of which state should be stipulated in the contract and which will subsequently be applied by the body implementing the law.

The substantive categories for determining the applicable law contained in the Austrian Private International Law Act and the Swiss Private International Law Act respectively is as follows:

Factual situations with foreign contracts shall be judged, in regard to private law, according to the legal order to which the strongest connection exists (Austrian Act on Private International Law, first paragraph).

It should be noted that the Austrian Law on International Private Law mediates the substantive connection between foreign law and national law – terms’ *strongest connection* rules refers to substantive law.

In turn, the Swiss Law on International Private Law introduces the principle of establishing foreign law by introducing a procedural aspect:

The contents of the foreign law shall be established by the authority on its own motion. For this purpose, the cooperation of the parties may be requested. In matters involving an economic interest, the task of establishing foreign law may be assigned to the parties. Swiss law applies if the contents of the foreign law cannot be established. (Federal Code on Private International Law, article 16).

Undoubtedly in this case there is a conflict between the collision binding *lex voluntatis*, which norms, according to mentioned laws of Austria and Switzerland, differ in content.

It seems reasonable to raise the question of how the applicable law will be established.

A conflict-of-laws rule has the following components: scope and binding. Scope indicates the range of social relations subject to legal regulation, while binding specifies the applicable law.

Analyzing General Code on Civil law (ABGB) paragraph 1217 through the lens of the concept of conflict-of-laws scope, it seems plausible to conclude that the range of social relations covered by this provision is extremely broad. To determine the applicable law, it requires a reasonable narrowing – it is impossible to imagine that both inheritance and content-based relationships would be covered under the same denominator.

According to the pandect doctrine of law, these relations are located in different sections of legal regulation and have nothing in common between them.

Undoubtedly, General Code on Civil law (ABGB) paragraph 1217 requires qualification to denote acceptable testamentary dispositions in this paragraph body. This reason is a multiple object fixing in this norm – marriage contract concluded with the purpose of respecting the marriage union gives

leastwise four objects for acceptable testamentary dispositions:

- 1) a dowry;
- 2) a widow's share of the inheritance;
- 3) an inheritance agreement;
- 4) life-long use of property with the intention of supporting the widow in case of death.

Qualification should be carried out at the initial stage of overcoming conflicts of laws (resolving so-called latent conflicts) and allows, by correlating the factual nature of specific relationships with the relevant norms of a given legal system, to identify the conflict rule that will determine the applicable law, and then determine this law itself, the status of the relationship.

It is the evidence of the parties and the court's effective search for the law that will answer the question of the status of the relationship, which in turn will reveal the closest connection of the relationship with the legal order of a particular state, as required by Austrian Act on Private International Law above-mentioned norm.

However, arises a question: how will the closest connection of the relationship with the legal order of a particular state are expressed in the situation of the application of the contract in relation to real estate?

Austrian Act on Private International Law establishes, that

Acquisition and loss of property rights in corporeal things, including possession, shall be judged according to the law of the state in which the things are located at the time of competition of the factual situation underlying acquisition or loss. (Austrian Act on Private International Law, paragraph 31).

A factual situation in law is defined as the totality of legal facts, both positive and negative, necessary for the emergence of a specific legal relationship. In this case, the problem of finding the applicable law under General Code on Civil law (ABGB) paragraph 1217 fraught with legal uncertainty.

For applicable testamentary law denoting is necessary a set of legal facts of a negative nature associated with *death of the testator* concept.

For applicable obligation law denoting is necessary a set of legal facts, associated with *life-long use of property with the intention of supporting the widow in case of death* concept.

To denote applicable contractual succession law necessary to combine with necessary complicating degree mentioned above concepts.

Concepts, fixed in *a dowry, a widow's share of the inheritance, an inheritance agreement* legal categories relate to testamentary law directly.

In turn concept, fixed in *in case of death* category refers to obligation law, this concept connection with testamentary law by subconcept *in case* possesses only in indirect posture.

Additionally, relationships associated with concept *life-long use of property with the intention of supporting the widow* are linked with positive legal facts' compound.

In case of mentioned agreement recognizing within Switzerland territory, Swiss Federal Act on Private International Law, in terms of legal regulation of issues related to the emergence and exercise of property rights to real estate, introduces a quite contradictory rules – mentioned relation regulate three norms – Federal Act on Private International Law articles 52, 92, 100.

Mentioned articles state:

The acquisition and loss of personal property rights are governed by the law of the place where the personal property is located at the time of the facts on which the acquisition or loss is based (Federal Act on Private International Law, article 100).

The law applicable to the inheritance estate determines what is included in the estate, who is entitled to inherit and for what share, who is liable for the debts of the estate, which legal institutions of inheritance law may be relied upon, and which measures may be ordered and subject to which requirements (Federal Act on Private International Law, article 92).

Marital property relations are governed by the law chosen by the spouses.

The spouses may choose the law of the state in which they are both domiciled or will be domiciled after the marriage celebration, or the law of a state of which either of them

is a national. (Federal Act on Private International Law, article 52).

Under this regulation applicable law denoting and its further enforcement tears apart within three essentials imperatives:

1) governed territory legal order for acquisition and loss of personal property rights, the law applicable to the inheritance estate determines what is included in the estate;

2) [person] who is entitled to inherit and for what share;

3) [person] who is liable for the debts of the estate, governed territory for marital property relations for *de lege ferenda* purposes

This situation demonstrates that *lex personalis* and *lex rei sitae* collision bindings for mentioned factual situation are not quite flexible.

Agreements, concentrated in agreement, concluded with General Code on Civil law (ABGB) paragraph 1217 requirements contain rights to real estate and other *de lege ferenda* rules which are characterize with undeniable, these rights nature in regard to subject matter to the law of the state in whose territory the property is located is unqualified.

Additionally, because Federal Act on Private International Law article 52 states that *marital property relations are governed by the law chosen by the spouses*, this circumstance provides permissibility of the choice which indicated in relation to the agreement, concluded with General Code on Civil law (ABGB) paragraph 1217 requirements content divide in three forms of marital property

1) marital property, which spouses decided as an inheritance contract property;

2) marital property, which spouses decided as a marital contract;

3) marital property, which spouses denoted as marital contract as a future inheritance contract property object.

Without a doubt, in this situation, using only private legal acts to determine the applicable law will complicate above mentioned objects' qualification.

Limits and admissibility of the choice of law are regulated not only by the normative acts of individual states – the law of the European Union is also regulated by regulations and directives that have direct effect and fill in the gaps in legal regulation and, in problematic situations, serve as sources of law, including the law that must be applied to the institutions of contractual succession.

It appears that the main regulatory documents in determining the applicable law in a situation of contractual succession should be the following regulatory acts:

1. Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter – Regulation 4/2009);

2. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (hereinafter – Regulation 593/2008);

3. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter – Regulation 650/2012);

4. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter – Regulation 1215/2012)

At first glance, the number of regulatory documents and their titles indicate that the law applicable in the situation of contractual succession will be established and its limits will be determined correctly and in accordance with the specific legal situation.

However, an analysis of the regulatory framework of these regulatory documents allows us to conclude that there is a lack of proper regulation.

For example, Regulation 4/2009 article 11 fixed in mentioned regulation introduction provides the following:

The scope of this Regulation should cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors....

Further, the provision is established, that

For the purposes of this Regulation, the term "maintenance obligation" should be interpreted autonomously.

In other words, Regulation 4/2009 refers the interpretation of the essential terms of the applicable law to the rules of the statute of free expression of the will of the parties to the contract.

Although Regulation 4/2009 is a good instrument for establishing the law, in relation to an agreement arising from General Code on Civil law (ABGB) paragraph 1217 if the agreement is qualified as an agreement which regulation is fundamentally inappropriate for establishing applicable law as a contractual succession law in wide sense – term *maintenance obligations* by legal categories *a dowry, a widow's share of the inheritance and an inheritance agreement* by permission, fixed in term *autonomously* may refer applicable law to testamentary law as a contractual succession law discrete part.

The reason for this conclusion is that the essential conditions correspond to the contract concluded in accordance with Swiss Civil Code article 494 requirements.

In turn, the qualification of the interaction of the norms of General Code on Civil law (ABGB) paragraph 1217 with Swiss Civil Code article 494 norms is complicated by norms that establish *emergence of a factual situation related to the acquisition or loss of rights* legal category.

In determining the law applicable to contractual succession, because of second article statement it is also impossible to use the provisions of Regulation 593/2008.

Article 2 of this document establishes the following provision:

Obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession

A similar provision in relation to the law applicable to contractual succession is also present in other regulations mentioned above.

Due to these circumstances, the legal regimes that establish and mediate the institutions of contractual succession are not fully clarified; their regulation by legal acts of the European Union does not allow interested parties to find the correct method of legal regulation.

Referring to national legal acts to correctly establish the applicable law is also problematic due to the lack of a single, unified concept of both the inheritance contract itself and a general understanding of contractual succession.

Since contractual succession is a complex legal institution, it is impossible to attribute the problem of determining the applicable legal order unambiguously to inheritance law. It is also impossible to accurately determine the applicable law using the legal framework of the law of obligations.

Based on the above, it seems necessary to carry out a doctrinal and normative distinction of the statute of the right of inheritance obligations (or the statute of contractual succession) with the creation of specific legal regulation.

The need for normative identification of the right of contractual succession is an important legal task.

The doctrinal development of the statute of contractual succession is also important because of the following reason – according to professor Ulrich Haas

In German law, the inheritance statute covers all the consequences of the opening of an inheritance, whereas the inheritance statute of common law countries concerns only the issues of the status of the heir; that is, who is the heir and what share is due to him, but not issues related to the stages of administration and probation (Haas, 2004, 477).

In questioning *consequences of the opening of an inheritance* category in relation to the statute of contractual succession, the problem raised by the esteemed professor is quite relevant – the opening of an inheritance as a legal fact and the existence of legal situations arising from it is in the plane of the perception of inheritance law in the forms of inheritance by law and will, as well as in the situation of contractual succession, is quite controversial.

The concepts of similar categories also vary depending on the area of legal regulation and applicable law.

Collision bindings *lex personalis* and *lex rei sitae* apply only to the consequences of inheritance, without denoting and regulating the law applicable for legal deal body itself, as a separate, isolated form – these ties cannot determine the law applicable to the contract.

The law applicable to the contract is governed by the general conflict of laws clause *lex voluntatis*, which leaves the determination of the applicable law entirely to the will of the parties to the contract. The validity of this binding is limited only by the public policy of the national state. This provision is unacceptable for contractual succession.

For these reasons, specific legal regulation must be developed for contractual succession.

The theory of contract law bases the contract on the principle of obtaining *the maximum social benefit from trade* (Bix, 2006, 10). It seems that by modifying this principle in relation to contractual succession, it will be possible to formulate a provision that will serve as the basis for finding the law applicable to this institution.

In the context of the harmonization of European Union law, there is a significant legal basis for such a step – Case 120/78, heard by the Court of Justice of the European Communities on 2 February 1979. Although the subject of this case is trade relations, an important outcome of this case was the development of the concept of mutual recognition of civil law forms in various spheres of life within the European Union. However, as noted above, simple mutual recognition in determining the applicable law very often clashes with the public policy of a nation state.

Of course, in this situation the issue could be resolved by harmonizing the norms of inheritance and contractual law, but this has its negative aspects, in particular the unification of private law institutions is associated with fairly large costs due to the principle of *dependence on the previous trajectory of development* (Smits, 2002, 99).

This principle includes the categories designated by the terms *the principle of predominance* and *the principle of impurity* (Hodgson, 1988).

Certainly, creating legal regulation, legislator and legal doctrine assignees must put predominance principle first. This principle that will allow to identify a priority relationship and, by applying impurity principle, filter out subsidiary categories that do not contribute to the correct definition of the forms of contractual succession and the creation of its legal basis.

Note: predominant [principle] – several motives may have operated, is one of greater force and effect, in producing the given result, than any other motive (Matthews v. Bliss, 22 Pick. (Mass.) 53.

Results. Contractual succession institutes contain a number of provisions in regulatory acts that only presume a future inheritance without establishing its status in relation to existing regulation norms in regard to *de lege ferenda* regulation.

These provisions do not establish hereditary mass objects' arising, involved persons' individual status and their legitimate actions in situations, when mentioned institutes locate in a transitional situation – when contract or deal recognized by another and when previous legal regulation is being replaced by the new.

A future inheritance arises depending on the occurrence of conditions that, according to the textual interpretation, establish the emergence of objects of future inheritance as an alternative means of fulfilling obligations.

Lex personalis and *lex rei sitae* collision bindings for *lex voluntatis* collision binding targeted purpose with legally justified basis lead away the process of determining applicable legal regulation for contractual succession purposes toward discretionary and splittable private law norms sphere.

Revocability and irrevocability of the mutual intentions essentials under *lex voluntatis* collision binding substantive law denoting for contractual succession contracts and legal deals is different.

Suggestions. To denote applicable law for contracts and legal deal with *mortis causa* intention and future inheritance objects need to compound actual relations with succession elements with actual relations who contain elements, whose imperatives fixed in obligation law, ensured by *de lege ferenda* law norms.

To finish this study analyze, subject to possible offer a model law, adopted this act as a Civil Law of the Republic of Latvia elongation. This acts' task is to justify law norms and its essentials, applicable to contracts, agreement and deals, which contain future inheritance norms and essentials.

MODEL CODE "ON THE CONTRACTUAL SUCCESSION LAW IN DISCRETE CONTRACTS, AGREEMENTS AND DEALS"

Justification for this law introduction

Justification for this law introduction is contractual succession law imperative rules regulation establishment which enshrined in this law. This justification also proved by the need to introduce into contractual succession legal regulation categories and norms essential for legal regulation prescribed by inheritance agreement mandatory norms as contractual succession central object in relation to contracts and legal deals, assigned in contractual succession:

- 1) Inheritance contract (Civil Law, section 639) ;
- 2) Inheritance contract as an inheritance agreement (Civil Law sections 639,1511)
- 3) Marriage contract as an inheritance contract essential/Marriage contract as a future inheritance contract (Civil Law, section 114, part three, Civil Law, section 639);
- 4) Mutual will (Civil Law, section 604);
- 5) Mutual will as a future inheritance contract (Civil Law, sections 604, 606, 639);
- 6) Donation agreement with future inheritance clause (Civil Code, section 1926, second sentence);
- 7) Donation agreement as a future inheritance contract (Civil Law, sections 639, 1926, second sentence)

The basis for this introduction is also recognized as the need to introduce a security function of legal regulation of the imperative norms of the inheritance agreement as contractual succession central object. is the acquisition by contractual succession parties of contracts and legal transactions of the future inheritance in accordance with the law.

The acquisition of future inheritance must comply with Civil Law sections' 646 provisions, taking into account the consequences of the provisions establishing the right of persons for future inheritance of the above mentioned Civil Law sections' provisions.

An additional basis for this consolidation is inheritance rights and obligations fulfilled by inheritance contracts', agreements' and deals parties and, accordingly, rights and obligations amount received by mentioned parties contradictory and unstable formation nature, indicated above contracts, agreements and deals subsistence issues.

This law provides for the clarification and normative establishment of essential categories of objects and subjects of inheritance rights and obligations, by which the parties to contracts and transactions of contractual succession, both jointly and individually, carry out the creation of an inheritance estate.

Terminology used in the law

Contractual succession law exists as a system of legal norms applied to the system of contracts, agreements, and complex nature legal deals enshrined in the Civil Law of the Republic of Latvia (hereinafter – Civil Law), as well as this law, and providing for the acquisition by the designated heir of inheritance rights to objects that meet the essential criteria of the rules on future inheritance by the inheritance contract, inheritance agreement, or legal transactions specified above (Civil Law, section 646).

Article 1. Essential terms of the inheritance agreement (Civil Law, sections 639, 1511), an inheritance agreement or a legal transaction established in accordance with Civil Law sections' 639 provisions.

The essential conditions of the inheritance agreement are recognized as the enjoyment of rights and fulfillment of obligations set forth in Civil Law of the Republic of Latvia in section 114, third part, section 604, section 639, section 1926, second sentence in accordance with Civil Law section 1673 provisions in relation to future inheritance subject matter.

Article 2. Bilateral inheritance agreement or other legal deal legal nature and consequences under provisions set out in Civil Law section 639.

(1) Each party to an inheritance agreement or other legal deal or the parties mutually have the right to make orders that comply with the essential components of Civil Law 646 and 1673 sections.

(2) If each of the parties has included in its disposition rules that do not correspond to the essential components of the Civil Law section 646 in terms of the rules on future inheritance, then the invalidity of one of these dispositions entails the invalidity of the entire inheritance agreement or other legal transaction set out in Civil Law section 639 of the Civil Law section 646 on future inheritance terms.

Article 3. Unilateral dispositions.

(1) Each party to an agreement or other contractual succession deal which occurs as the subject of this law may include in the inheritance agreement any unilateral disposition that is permitted in agreements and legal deals set out in Civil Law section 639 in terms and rules on future inheritance.

(2) With respect to such dispositions, the rules on testamentary dispositions shall apply, interpreted in accordance with Civil Law section 639 insofar as they relate to inheritance agreement provisions in wide sense – as a contractual succession legal basis. A disposition may also be revoked by an agreement revoking contractual disposition.

(3) If an inheritance agreement or other legal deal stipulated in Civil Law section 639 is cancelled as a result of the exercise of the right of unilateral withdrawal (Civil Law sections 1508, 1589) or in the manner determined by Civil Law section 1592 provisions or in the cancelling agreement (Civil Law, sections 1862, 1863, 1864, 1865, 1866), then disposition shall lose its force,

(4) Disposition shall not lose its force in cases where it is established through negotiations between the parties or a court decision that the intentions of the party to the contract or legal transaction were different and were in accordance with the provisions of Civil Law section 646 terms of provisions on future inheritance and the corresponding rules of the obligations law.

(5) Civil Law section 1589 provisions in terms of the rules on known circumstances permitted by law shall be interpreted and also applied in the manner specified for Civil Law section 1592 provisions.

Article 4. Bilateral dispositions.

A party to an agreement or legal deal, which content determined by Civil Law section 114, part three, Civil Law section 604, Civil Law section 639, Civil Law section 1926 provisions, may include agreement or deal inheritance dispositions that comply with Civil Law sections' 639, 646 provisions.

In case when inheritance dispositions text does not comply with Civil Law sections' 639 and 646, this entails the invalidity of the contract or legal deal in the part that is essential for future inheritance.

Article 5. Bilateral dispositions' admissibility limits.

An expression of will that determines the basis of an agreement according to which the parties to contracts and deals defined by Civil Law section 114, part three, Civil Law section 604, Civil Law section 639, Civil Law section 1926 provisions undertake to make or not make arrangements in the event of death, to cancel or not to cancel them, is null and void.

Article 6. Bilateral dispositions irrevocability.

Bilateral dispositions irrevocability basis is heir's contribution to the property designated by inheritance agreement or inheritance contract as inherited property.

Mutual dispositions' irrevocability moment is the date corresponding with provisions set forth above.

Article 7. Application of marital rights, donation rights, and testamentary inheritance rights in determining inheritance share value share in inheritance contracts, agreements and legal deals involving contractual succession.

Determining inheritance share value under inheritance contract, agreement or deal, property rights and obligations established by imperative rules are taken into account.

Marital rights, donation rights, and inheritance rights under a will, which are essential to the provisions of the articles set forth in Civil Law section 114, part three, Civil Law section 604, Civil Law section 639, Civil Law section 1926 provisions, in accordance with Civil Law section 1673 provisions.

This application is carried out in relation to the property equivalent of the future inheritance, as set forth in the provisions of the above-mentioned sections as the basis for applying Civil Law sections 639 and 646 requirements.

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