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THE FUNDAMENTAL QUESTIONS OF REGULATION OF THE MODERN FINANCING FACTORING IN THE PUBLIC AND PRIVATE LAW

Thesis of the PhD Dissertation

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I.

SUMMARY OF THE RESEARCH TASK, THE AIMS OF THE RESEARCH

The modern financing factoring has developed as the legal institution of the XX. century and became the actual legal transaction. The new feature character is a serious challenge for the jurisprudence and for legislators, because legislation has to deal with establishment of the exact, detailed regulation in consideration of the role in the economy.

The regulation is based upon two pillars; one of the pillars is the public law and the other is the private law, so it is avoidable for a learned treatise to examine both spheres.

The new feature and the quick development of the theme and the author's acquired professional experience in this sphere over a period of years gave reasons the writing up of the theme from the point of view of the theory and the practice. The aim of the dissertation is to place

the factoring in the domestic jurisdiction from the point of view of the theory, and to offer regulation alternatives for the legislation.

Taking the sequence of the ideas into consideration the dissertation has four main parts, swerve from chapter's division. These are the following: The historical development, the theoretical principles of the classification of factoring deals, the examination if the rules of the factoring in the public and in the private law.

I concentrate my attention in the course of the historical development on the formation of modern financing factoring; this means the detailed examination of the legal development of the USA and Western Europe. The dissertation doesn't deal with the Hungarian development. The reasons of this: On the one hand the Hungarian development similar to the Central European development. On the other hand the modern financing factoring has been developed after the II. World War; only in the nineties. I examine this evolution at the certain legal institutions.

By the historical analysis I set aim the exploration and analysis of the problems of the legal institution's development, and to points in its impacts to the present legal regulation.

To the detailed examination of the factoring is indispensable the legal institution's theoretical definition and to define its concept from a new aspect. With regard to this I consider an important research task, to analyse the different literature points of view and to formulate a new theoretical concept of the factoring.

The factoring has countless version, and all of them took effect to the factoring's development. In the variegation of the variants only some foreigners and a domestic author made dogmatic systematisation and these categorisations lean primary onto the results of the Anglo-Saxon law literature, or they lean on the legal history antecedents. I considered fundamental from the point of view of the judgement of the legal institution to establish a new classification structure reflecting the modern regulation, which includes the Anglo-Saxon and the continental legal solutions equally.

The regulation of the factoring contains public law rules, so I deal especially with the financial performance character of the factoring and with the institutional background. This is the two area, though I circumscribe the factoring in the field of the bank law.

From this segment of the regulation of the factoring we find few literature points of view of the foreigner and the domestic works, I regarded it as an important research aim to analyse the financial service character of the factoring and its institutional background in detail equally. I examined it how fits into the system of the financial services, what kind of special features has and what distinguishes the plain assignment from the financial service activity made businesslike.

The examination of the financial service character made the overview of the institution background necessary. I found the examination of the financial institutional system necessary and inside this the making known of the different regulation concerning institutions making factoring activity and to work out proposals to encourage the modification of the regulation.

The dissertation doesn't touch upon the questions of the granting and supervision of the service, because of the double institutional character of the factoring. The reason for this is that

the loan-offices and the financial undertakings are able to accomplish the factoring too, for this reason there isn't special rule for the granting and supervision, which would differ from the accomplishment of the financial performances.

Because of the character of the factoring is necessary, that let some fundamental questions of the civil law regulation be processed. This interest was strengthened by the work in the field of the private law, by which there was a great dilemma of the legal theory, if is it necessary to regulate the factoring as an independent type of a contract.

In the process of the elaboration the legal experts turned a deaf ear to this resolutely in a developed conception up to 2006, saying that it is necessary to qualify the rules of the assignment for the reception of the rules of the factoring. But taking into consideration the request of the trade practising, we already meet the factoring in the draft of the Ptk. of the year 2007 as a named contract type. This professional debate prompts me to sum up the domestic and the international, foreign regulation of the factoring and the cession, - as an underlying legal relation -, and to make proposals for the future legislation.

II.

THE METHODS AND SOURCES OF THE RESEARCH

In the course of the preparation various methods have been applied regarding the different issues.

With regard to the whole thesis it was necessary to use interdisciplinary view. The theme primary touches the financial, the civil the commercial law equally. The financial institutions' regulation is processed inside the financial law branch from the standpoint of the factoring, concentrating onto the financial service and the structural, institutional character. The regulation of the civil law and the commercial law get to an application with a legal comparative character partly, comparing the context of the financial law and the civil law branches, their link and the contradictions of the regulation. The factoring's regulation of the civil law and of the commercial law is exposed at the same time in an independent chapter– concentrating on the fundamental questions – too

The complex legal analysis is served the use of the relevant parts of the tax law, the accountancy law in the interest of the developing of the more correct legal standpoint.

Essential is the use of the scientific results of the economics from the viewpoint of the topic of the dissertation, particularly with the development of the factoring, analyses which are connected to the spreading or the understanding of the function mechanism.

The historical approach pervades the whole treatise. The factoring can be interpreted in our days with the help of a historical view. The historical analysis constitutes an independent chapter presenting the phylogeny of the factoring in United States of America, in England, in France and in Germany. The Middle Eastern European countries' regulation, to the presentation of which occur likewise, is considerable in terms of the phylogeny. The domestic phylogeny did not get

into a separate chapter, but the domestic legal history antecedents are presented. by the analyses of the single subfields

The application of a legal comparative method is important because of the single countries' different legal practice. The modern financing factoring has developed and grew in USA, because of this is indispensable the analysis of the American legal practice and a theory. From among the European countries because of the different development or in consideration of the different practice primary the English**,** German, French legal sources and literature sources are put to use by the analysis of the single problems**.**

The European Union rule system is presented furthermore, particularly among the civil law regulation, the international law is playing an important role concerning in the legal institution's international regulation (UNIDROIT Convention) and the customary law, which prevails particularly on the regulations, and the contract samples.

It is necessary for the understanding of a civil law and the public law regulation the analysis of judicial practice and the opinions of the PSzÁF (State Authority of the Financial Organisations, henceforth abbreviated: PSzÁF), to which the commentaries, the actual judicial decisions were put to use.

Because the point is a totally new, in mass from the 1990 years applied legal transaction, serves the understanding well and replaces the deficiencies of the sources well the analysis of contract samples and regulations is worked up by the bank contractual practice and from these the deduction of the inferences which can be utilized for the legislation.

In the summary of the practical statements are important the legal adviser or the financial undertakings' leader acquired experiences.

The work is characterized on the whole the descriptor or the critical method and outlook equally. The descriptor method autotelic, since it plays an important role in the deeper understanding and analysis of the legal institution. The critical method prevails on the area of the law's interpretation especially, where occur not only the proposition of the problems simply, but get onto development answers given onto the problem, offering a diverse alternative in many cases onto the legislation and the dispensation of justice equally.

III.

SUMMARY OF THE SCIENTIFIC RESULTS AND THE POSSIBILITIES OF USE

1.

We may establish that a big comprehensive, monographic work expanding on public law and civil law equally in connection with the research of the factoring did not prepare our days, some more considerable works only deal with analysing of a subfield simply.

The present treatise wishes to give answers onto questions, which come up in the course of the legal practice and the theory, with a legal historical, foreigner and with an international conclusion, taking the accumulated experiences in the course of the contractual and the judicial practice into consideration.

The factoring made fast progress in our homeland, and the economic significance was growing in the last few years largely. (The factoring trade already attains 700 billion Ft sums in the year 2007 in Hungary.) It means important financing device to the economic life, which development is hindered the deficiency of the legal regulation largely and the contradictory judicial decisions in the course of the dispensation of justice. The time came when; the financial service activity can get between clearly regulated legal frameworks.

2.

On the beginning of the research I was guided with the idea, that the factoring activity is independent, its regulation in a separate law measure form is the most correct standpoint, and this would resolve the contradictions between the provisions of the separate law areas. Taking into consideration the international experiences, the domestic tendencies of regulation, I came to the conclusion, that the definition, correction of the present regulatory frameworks and the development of amending proposals are more expedient. This does not mean that I would not consider the best solution the creation of a new unified factoring act, but this does not appear feasible based on the present process of the legislation. If the legislator would believe it in that manner, that it is practicable, the proposals drawn up in the details of the dissertation may add good starting basis and alternatives of regulation to framing the new law.

3.

We have to look for the legal institution's roots in the travelling salesman's activity in the antiquity or in early mediaeval Europe equally. (The factor a name derives from ancient Rome.) In the historical development play the trade, inside this the international commercial and international economic contacts the most important role. Considering the process develops firstly the exports factoring, then the inland factoring and the international factoring lastly.

4.

I analyse the factoring in the European phylogeny in three countries, beside the Middle East European development. The reason of this that the factoring developed and improved in these countries the fastest, roved over the area of the legal regulation concerning a different developmental road.

In England the modern factoring came onto existence from the practice of the discounting of the account and from the fusion of American factoring. The aim is the financing activity primary.

The German development spreads all over a different way because it serves as a banking service, therefore it develops as a credit besides the claim's assignment, and it wins its final form mixed with the American factoring's practice.

The feature of the French law development that it develops based on English, American samples, but the independent factoring companies are the typical ones considering the institution frameworks. Specific is the French development from a viewpoint, that there is a different act, the loi Dailly (Code monétaire et financier). about the claims deriving from the assignment of commercial transactions. The other peculiarity, that the legal background of the factoring is in the practice of the factoring not the assignment, but the rules of transfer of rights.

5.

The analysis of the middle east European development is important for me to shed light on the practice of such countries, that similar social and an economic road was spread all over, than the Hungarian development. Their feature, that variegated legal solutions were applied, similar problems occurred to the development of the factoring after all.

We may establish it that in the European law development the factoring is defined as a financial service and characteristically as a licensed activity. The severer regulation makes the order of the activity possible for the banks exclusively in the view of an institution structure, in a milder circle of regulation this is allowed for other financial institutions and it occurs exceptional simply that anybody is allowed to make this activity

We may find in these countries beside the public law regulation as underlying rule the civil law regulation; feature is furthermore, that the UNIDROIT Convention comes into effect and hereby the affirmation of the regulation of the international factoring.

6.

The domestic regulation is similar to the law and order of the mentioned countries. An act being about the loan offices and financial undertakings defines the concept of the factoring in Hungary, as subject to licence financial service. This act fixes with regard to the institutional structure that financial institutions may make this financial activity businesslike simply. The rules of the international factoring are fixed since the introduction of the UNIDROIT Convention in 1996.

7.

The *conceptual clarification of the factoring* is inescapable before the legal analysis. This is important therefore, since there are serious debates up to the present between the practical experts and the theoreticians equally from that, what is included in the factoring, and what kind of activity is understood under it. It is necessary to establish that the specialists understand a diverse service by it based on the practical experiences, or more separated activities are attached to the factoring. Three kinds notion is reflected in the literature.

Approaching from the side of the public law, it interprets the factoring emphasizing the factoring's credit and financing function exclusively, demarcating from the wide-ranging concept of the claim purchasing.

The other notion interprets the factoring widely including an activity that covers some subfield of the factoring that handles this activity as a complex service.

The third notion emphasizing and examining the civil law side though, manages the contractual relationship as a special, atypical contract. The study examines the concept of the factoring all in the domestic, all in the foreign literature (German, English, and French), offering alternatives for a conceptual summary.

8.

The treatise examines the interpretation of the factoring's concept in the domestic judicial custom. Emphasizes that numerous judicial decision was born about the assignment, until we

meet slight number of judicial decision about the settlement of the question of the factoring relationship, and the judicial custom isn't uniform in the view of the factoring's nature.

Two notions prevail on the area of the dispensation of justice, that it is showed in connection with the temporal difference, how the judicial interpretation of the transaction was burnished.

A Supreme Court's decision was made in 1997 still lay equals sign among the factoring and the assignment.

The Court of Appeal's judgement was passed in 2003 points out already the complexity of the transaction and compared to this it handles the factoring transactions not only taking the rules of assignment into consideration schematically. The judicial legally binding decision regards the factoring as the purchasing of the claim, or advancement of the claim, with the taking over of the collection's risk or without it.

9.

The treatise creates a new factoring concept leaning on the research results. Establishes that we meet with complex transaction, which contains three elements the financing, the service and the takeover of risk. There is no debate about the two first elements in the literature and the existence of these two elements is supported by practical experiences. The third element is possibility, in spite of the fact that the earlier mentioned German and French authors regard it as a necessary element equally. But the bank practice and quite a few earlier mentioned domestic and the foreign author emphasize that the takeover of the „del credere" risk do not happen in more cases.

10.

The treatise places the factoring on the area of the theory, integrating the practical experiences and the working system. It fixes a wide-ranging concept, onto which the concept of the claim purchasing (the trading of a claim) offers suitable mostly. It interprets the claim purchasing widely, into which belong the purchasing of the expired and not expired claims for a counter value, but for itself – opposite the rules of the Hpt. *(Act about the Credit Banks and Financial Undertakings, henceforth abbreviated: Hpt.)* – does not consider it loan -stretching.

I interpret the concept of the claim financing as a narrower concept. We may talk about the fact that this type of claim purchasing is already a special case of the stretching of the loan, and financial institutions may make this activity exclusively. The signatories' aim is in this case not the acquisition of the ownership of the claim with a definitive character, but the financing. The change of the ownership of the claim reflects a security character, since the factor firms' aim is the granting of the current assets funding by the condition of a counter claim right or without it.

The claim purchasing may be with a financing character according to the aim with an other aim and the factor firms reduce their risks with the change of the ownership, or a collection's right is won by it opposite the supplier or the customer equally. The factor firm does not want the claim in this case, it is justified by the developed domestic practice, that the counter claim right spreads in case of the factoring activity, that is the factor firm does not undertake „del credere" risk.

I would separate *inside the financing* of the claim the *factoring* and the forfeiting, and the *discounting of bills*.

The factoring is the financing of short term, expired and did not expire, but acknowledged money claims, that the factor firm buys the demand with the condition of reimbursement claim (counter claim right) or without it, or undertakes other additional services in the interest of the managing and collecting of the claim. The factoring is a complex financial service, at which the other services play an increasingly more important role besides the financing.

So I interpret the factoring as claim financing and I identify it with the special type of the claim financing.

11.

The *typification of the factoring* is at least so manifold and complex problem, as the definition and clarification of the concept, therefore important the analysis and interpretation of the types, which lead us to the understanding of the function of the factoring.

From more viewpoints we may find diverse typification all in the domestic, all in the foreign literature and in the practice equally. The formation of the different types is partly the results of historical development, and partly the changes of the market claims.

Summing up the literature points of view a new factoring a classification system gets to forming, which is equal to the features of the today's modern financing factoring mostly.

The categorisation introduces the factoring as coherent whole one. To be noticed but, that the basis of the categorisation constitutes the main types of the factoring and apparently the economic life draws up newer and newer constructions. The benefit of the grouping but, that these changes can be assigned into this system, or can be continued to improve the system without going through fundamental modifications.

12.

The treatise reduced to the analysis of the most problematic areas of the civil law and public law regulation, since the extent bars or the detailed analysis of the single areas affords the opportunity to this.

The dissertation affects the two areas of the civil regulation concerning a *financial service character* the *institutional background*. The permission, the supervision or other bank law areas do not point out the special character of the factoring properly, or the above analysed areas caused most problems for the practice.

13.

To the understanding of the *civil regulation of the factoring* we have to examine its place occupied between the financial services and its role, reviewing the morals deriving from the change of the regulation of the financial services.

More problems got to a proposition in the regulation of the effective credit institution law, onto which the answer appears in many cases in the form of a de lege ferenda proposal. Dividing the financial activities up to the credit institution law already became obsolete, became empty. The partition is already not equal to the original intention of the legislator.

Nothing gives reasons for the present partition of the financial activities already today, therefore it would be necessary to recur to the system of Ápt. and to define uniform financial service scope of activity – assigning the additional financial services into this structure – or leaving the present double partition , but it would be necessary to rearrange the activities in this latter case.

The plainest solution is the recurrence to the regulated system of Ápt, where the legislator defined a uniform banking activity system. The single uniform financial service scope of activity can be worked up in Hpt.'s system, that the conditions of its activity are arranged by the legislator in separate sections anyway.

14.

It would be necessary to make changes in the sharing of the licensing jurisdiction furthermore and to establish uniform licensing competence for PSzÁF. It may be an important argument beside the uniform permission that Hungarian National Bank (MNB) can be released from a part of the official sphere of authority hereby, strengthening the central bank's monetary institution character. Would be enough the MNB's preliminary advisory right on the case of scopes of activity, as on the case of single financial services.

15.

Important problem to the practice and to the law enforcement, where is the dividing line between the unique transactions not subject to licence and the transactions being qualified as a financial service. How many claims could buy a not financial institution without the infringement of the provisions of law?

Onto responding to the proposition it was necessary to analyse the criterion system of the financial services, the taxative regulation, to the permit constraint, businesslike, the currency and form compulsion. The most problematic is the conceptual analysation of businesslike from this system. We may lean by the concept's interpretation partly onto the theoretical approaches, partly onto the judicial custom, onto PSzÁF opinions, and finally at single legal areas determined concept concerning businesslike.

It is necessary to interpret the concept strictly, not extensively. The expanding interpretation would limit single activities, the aim of which is not the offering of a financial service, but they belong to the daily transactions of the economic organisms. Prohibition of these would be unjustified, involving them interpretation wise in the circle of the financial services. The severe interpretation of the measure serves for not to hinder the characters of the economic life in the forming of unique contractual constructions, or let an activity being equal to some elements of fact collective only be qualified as a financial service.

These transactions do not appear in mass and the money market's safe function is not offended, because of this cannot be forbid onto the characters of the economic life. This would demand correcting the rule anyway if the legislator wishes to prohibit this and the redefinition of the concept of the businesslike differing for the present one.

16.

May be subject of a debate the *factoring activity's place inside the financial service.* The service is defined as a strange gender of a credit- and of the stretching of a loan.

The factoring consists of a complex service packet transaction from all theoretical, all a practical viewpoint, that the loan does not bear the features of stretching in a full measure, transaction differing from it to be managed.

This does not mean that it does not have a common feature the factoring with the stretching of the loan, but the factoring cannot be defined as a strange gender of the loan. This is supported by the regulation of Ápt and Pit. (Act about the Financial Institutions), or more foreign legal sources, in which as an independent transaction gets onto a classification between the financial services.

If – indicating the earlier expressed – the transaction gets out from the concept of loan stretching, and is defined as an independent financial service type, inevitable important, that the indication of the money claim turn into the part of the concept.

17.

It would be necessary to make it possible in single special cases for the non financial institutions and for the non mother subsidiary companies the regular claim's assignment, with an expressed law authority, since intense insecurity appears with regard to this in the practice.

18.

I look for the answer by the analysis of the *institutional background*, that which financial institutions and with what kind of conditions could made the factoring activity. Removing the financial institution system from a theoretical side, I analyse the development in the view of the history. I point out how placed an antecedent regulation of the credit institution the factoring activity act between the institutions' activities

19.

I defined a new institution's grouping in the interest of the better overview of the institution structure which reflects and sums up the literature notions and law regulation equally.

The single institutions get to an analysis based on the institution structure. The literature and the legislator waited for it in the previous law regulation that factor houses dealing with factoring primary come onto existence in a credit institution form.

The contrary of this came true, the factoring companies make their activity in a financial undertaking form primary, the factoring got into the banks' scope of activity second.

It would be necessary to make the regulation and creating the factor houses in a specialized credit institution form more rigorous according to my opinion it would be necessary to prescribe it. The reason of this, that the financial undertakings get their sources from the bank generally in the form of a capital allocation or a credit, in this manner in the interest of the money market's safety would be necessary the introduction of a severer regulation with the increase of the factoring activity, onto which good method is the institutional regulation.

If we make compulsory the specialized credit institution form, then modification, and the supplement of Hpt. would be need, since the rest of the specialized loan offices do not get to a regulation here, but in a separate law.

The other solution is similarly to the other specialized loan office, that it would be necessary to regulate the factor houses and the factoring activity in a separate act.

20.

By the analysis of the public law's regulation arises many times the thought of an independent factoring act, which could put a detailed regulation on the legal institution. We had seen an example by the historical analysis of the American factoring act; or for example in the domestic regulation in the case of the mortgage loan banks and the mortgage lending.

21.

The deficiencies of the civil law regulation mean a trouble to the law enforcement beside the public regulation.

Two ways are taking shape here, one is the regulation as a named contract type, while the other is the modification of the assignment's rule system with a rate like that, which makes it suitable, – underlying rule –onto the management of problems occurring in the factoring relationship. The former solution would be according to my opinion more correct.

During the codification of the Civil Code (henceforth abbreviated Ptk.) the participant legal experts did not see a proper basis in the legislation until 2007 that the factoring is regulated as a named contract.

Ptk. draft of the year 2007, which manages the factoring as a named contract already, regulating it shortly simply, assigning the detailed regulation between the conditions of the contract of assignment in the future incorrectly according to my opinion.

22.

By the analysis of the factoring contract gets to limitation firstly the legal institution from the rest of the related legal institutions, then onto defining the legal institution in a civil law sense.

In a civil law sense the factoring is an atypical contract not named in Ptk., which bears on itself the characteristics of more contracts, and with the grasp of a contract's element cannot be characterised.

Taking the literature points of view into consideration, we may characterize it based on under mentioned the factoring relationship:

- Onerous transaction, financial service,
- Characteristic lasting contractual relationship in the form of a framework agreement, but may come into existence in a unique contract form,
- The factoring claim originates a basis contractual relationship, that a legal transaction may be diverse (usual transportation, undertaking, sales contract),
- multipolar contractual relationship, since the debtor is involved in the transaction, or in the case of international factoring the export and import factor may get to a withdrawal,
- The factor firm provides a complex service besides the financing (claim management,

collection, assumption of risk, etc.)

23.

The correct solution would be raising the written form to a law level relatedly with the *formal question of the contract*.

The domestic civil law does not stipulate formal requirements to the assignment and in this manner the factoring contract, to which insisted the Ptk. conception. Signing a contract come into existence in writing and may verbal, indeed according to Ptk.'s explanation relating on the mode of a behaviour.

Ptk.'s draft in 2007 brought a change, which states correctly the written form, with regard to this. In the practice the factoring contracts come onto existence in writing.

The credit institution act defines the factoring transaction entailing assumption of risk and prescribes an obligatory written form.

It follows from this according to my view that one of the signatories is a financial institution, therefore is obligatory to put the factoring contract in writing, still if the civil rules of the assignment do not prescribed it currently.

24.

In the practice we may *face unique* and *framework agreements* appearing equally, but we find the latter form characteristic at the bank factoring contracts.

Based on the domestic bank practice we may separate the four types of the inland factoring's framework

- With a repurchase guarantee undertaken factoring framework agreement;
- Assured factoring framework agreement;
- Factoring framework agreement with security;
- assured or with a repurchase guarantee undertaken factoring framework agreement.

25.

The *contractual relationship the claim* plays a determining role in the factoring relationship, which covers more problems to be responded to the legal regulation.

One of the important statements is that the object of the contractual relationship may be a money claim simply, but not all money claims.

The claims being attached to the entitled person may not be the objects of the contractual relationship, and the reasons for this is not only the law provisions, but that the factoring means the financing of claims deriving from business, contractual relationship with a commercial character.

26.

The other important practical problem is the *exclusion of the claim's assignment*. The present legal regulation allows to the signatories the exclusion of the factoring, as a result of which is the claim's assignment is invalid ensuing despite the exclusive provisions.

This legal regulation limits it the halves business, the freedom of a financial affair of disposal, this provision requires an urgent modification in this manner.

The international provisions give an example onto the correct regulation, but Ptk. draft of 2007offers a good solution since the exclusion or the limitation of claim's assignment according to the new provision in the framework of the factoring is void.

27.

The permit of the future claims causes the legislator and to the law enforcement many problems furthermore. They may be came into existence, but claims expiring in future or the yet onto existence came claims, from among which the latter ones mean the real problem. The effective legal regulation does not go into detail about this while Ptk. explanation considers invalid the assignment onto the claims arising in the future.

In connection with the assignment of future claims is the correct legal point of view, all the literature, all the international, all based on the future civil law regulation, that all in the area of the assignment and in the factoring contracts it is necessary to make the allowance of the future claims possible on, since the object of the factoring contracts is characteristically (in future arising or in future leading down) the purchasing of future claims. In the factoring contract is regulated not only factoring of account claims, which arose until entering into a contract, but the account claims arising following the entering into a contract, and they dispose of all present and future claim.

28.

The effective Ptk. does not regulate the assignment of the claim's parts similarly to the future claims. We find this in Ptk. commentary simply relating, where the author says that it does not have an obstacle one of the claims partial assignment. The explanation to the Ptk. conception was commented on goes into detail about the problem and expresses a similar point of view, as the European Union contractual basic principles.

Some regulations acknowledge the part allowance of the divisible claims, but takes action on carrying the potential additional expenses. The debtor needs the claim for more creditors owing to the sharing to accomplish, and with the register of the debt and with the fulfilment of the obligation plus administrative and bank expenses may arise. So the assignment and factoring of the claim parts are not excluded separately, indeed economic necessity, but the debtor may demand the reimbursement of incidental expenses.

29.

In the literature is formulated relevantly the partial assignment the *problem of the capital and the interest claims,* at which it is a question, that we have to talk about an uniform claim or about an independent capital and an independent interest claim.

The literature's notion shares the opinion of the judicial custom regards the capital and interest claim as an independent claim, there is not obstacle of the fact that they should be independent objects of the assignment, and take place partial assignment.

The problems of the assignment of the capital and interest claims, which do not appear in the factoring contracts, since happens the factoring of claims of which did not overdue generally. Would be expedient but – with attention onto the present judicial custom – instead of the

indication of a claim, the claim and its contributions to make an indication in the measure, because it would make the contract practice free from judicial combat, since not only interest claims may arise in connection with the main claim simply, but other expenses, onto the payment of which the obligated liable.

The correct legal point of view so it, that with the transfer of the claim – in default of a provision differing from this – the contributions of the claim (interest, other expenses) transfer too onto the new trustee.

30.

The scope of problems which is connected to the object of the contract arises the *multitudinous claims* or the question of the *global cession*.

This area likewise unregulated in the effective domestic civil law or the concept joins the problem to the future claims, namely in connection with identification of the claims. The earlier mentioned notions, in connection with the identification of the claims, open the road to the *multitudinous assignment of claims*. The strange significance of this is in terms of the factoring since in the framework agreements happens multitudinous assignment.

Likewise here related issue the *global cession*, that means the transfer of all existing and a future claim, which is the object likewise of the factoring contract, in this manner these cannot be forbid.

31.

As regards the *contracting parties' rights and obligations* the domestic legal regulation is reticent still in the area of the assignment, since it regulates only the grantor's responsibility, the indebted notification obligation, or the debtor's remonstrance and inclusion right. We meet in connection with the factoring contract much wider right and obligation heap on the area of the theory and the contractual practice, and the international regulation deviates on more areas these onto the detailed review.

Beside the rights and obligations of the supplier, and the factor, it is necessary to deviate to the indebted rights and onto the obligations equally, since these fundamental influences the transaction risk of the factor.

32.

One of the stressed areas among the rights and obligations is *the circle of related covenants in connection with the basic legal relationship.*

The problems in connection with the basic legal relationship basically influence the questions connected to the factoring legal relationship. Especially dangerous that case, when a false, fictitious account is made out or a contract is bound not onto a real service, not onto an undertaking activity. The factor may confront the problem that the invalid basis transaction would take it out at this time the invalidity of the factoring contract and the factoring collateral obligations insuring a contract joined to a factoring contract possibly would be in danger. With regard to this, the effective civil law regulation defines the grantor's responsibility relevantly the strength of the counter value, but it does not resolve the problems deriving from invalidity of the

basic legal relationship.

But the judicial practice made a reply to the problem, but it could make with the separation of the factoring legal relationship from the assignment, and set out from the special character of the legal relationship

It doesn't make invalid the factoring contract if about the assigned claim playing a security role practically proves true afterwards, did not exist (was fictitious for example), the basis transaction is from an other reason invalid, or if the assigned claim ceased. If the transferred claim did not exist of some kind of reason, the factor is bound to hold on for this. In the above case the factoral, a claim given in advance flaring up, in this manner prevail the credit business elements of a factoring contract. The validity of the factoring contract brings about the consequence that the provided collateral obligations insuring the factoring contract are valid too.

The correct legal point of view developed in the course of the judicial practice would be expedient to lift of the level of a regulation, if the factoring contract would become a named contract type.

33.

The problem of the modification of the basic legal relationship emerged in the practice likewise. In this direction we do not find a provision in the domestic regulation relevantly, but setting out from the principle of the contract freedom the signatories to the treaty could modify the basic legal relationship freely, but the modification may not damage the assignee's rights.

Ptk. conception arranges the problems arise from this already, and says that the modification of a relevant contract does not affect the assignee's rights existing opposite the debtor. The concept so does not exclude the opportunity of the modification, but the modification will not be effective opposite the assignee following his obliged notification.

Looking at the process of the factoring this regulation does not mean full safety to the factor firm, since though the contracting parties have to inform each other mutually, but what happens if the supplier does not satisfy this and the factor firm's essential rights get injured as a result of the contract modification.

The factor passes judgement on the transaction in the knowledge of the basic legal relationship, but the interim modification of the contract happens before the binding of the factoring contract, or following it, but before the notification. This influences the rights of the authorised of the claim based on the conception, the factor did not hear of this at the same time.

The Principles of the European Contract Law includes different regulation. The Principles declare with a general character that the basic legal relationship doesn't alter without the assignee's contribution. This regulation more unambiguous, so it will be needed to modify the effective Ptk based on the regulation recognized in the Principles, and it will be needed to change the codification regulation in this way

34.

Among the notification obligation it would be necessary to refine the domestic regulation. On the one hand it would be necessary to prescribe a written form onto the notification in the

effective regulation, which indicates the Ptk. draft 2007.

It would be necessary to refine the law regulation of the factoring in the draft on the other hand and it to should be prescribing the indication of the claim and the place of the fulfilment as a content requirement to the assignee's person. This is corroborated with the contractual practice, which the manners of the notification get to typification on this basis.

35.

We do not find the provisions concerning the rivalling claimants in the domestic regulation. The Union regulation arranges the collision of interests between the rivalling claimants and the assignee and it would be expedient lifting this into the domestic regulation, or to modify a measure being about the bankruptcy proceedings and liquidation according to this.

The assignee’s claim in reference to the demand precedes the claim of the assignee’s creditor according to the Union provisions in the course of the judicial proceedings, or the enforced claim by the grantor’s assignee in bankruptcy; the grantor’s liquidator and the grantor’s creditor. It would not be possible to involve the assigned claims neither in the execution procedure, neither in the circle of the liquidation procedure. (This I mentioned it earlier contradicts the domestic judicial practice, according to which the not taken claim beginning of liquidation constitutes the part of the liquidation property.)

36.

We face the points of view differing relatedly with the grantor's responsibility. The new draft defines cash surety, while the conception of 2006 defines a detailed responsibility formation. According to my opinion the latter more manifold regulation, with the comment, that the limitation of a responsibility for the obliged solvency cannot be accepted.

37.

The *factor's obligations and the rights* have considerable weight in terms of the content of the contract, beside the supplier's obligations and rights.

Ptk. rules do not deal with the assignee's rights and obligations in the framework of the assigning rules, we don’t find concerning rules with regard to this in new conception of Ptk.

Ptk. draft of the year 2007 goes into detail about the rights and obligations of the factor in the course of the determination of the content of the factoring contract.

The rules of the draft resemble UNIDROIT Convention’s provisions in much. But In the drafting of the single services are sharp differences compared to the international rules.

The law disintegrates the financing of the claim in the case of the financing, and the definitive transfer of the claim**.** In the former case it talks about advance payment, and in the latter case it talks about payment of consideration money. The international convention knows only the definition of the advance payment. The reason of this, that in the case of the modern financing factoring we may speak only about advance payment, about prefinancing, since the aim of the factor is the claim financing.

It would be expedient so, if the definition of the advance payment would remain in the factoring, and we would use the definition of the counter value concerning the offset cession**.**

Controversial are the draughting of services which are connected to the claim register. The international regulation understand it as book-keeping tasks which account leadership which is connected to outstanding debts assigns into his concept originally. The domestic regulation talks about a claim register separately and „from the tasks which are connected to the leadership of the account". This latter term expression cannot be understood. Question, what kind of task is set onto the factor by the legislator which is connected to the leadership of an account. Naming the supply of the accounting tasks beside the register of the claims would be more correct.

The regulation which is connected to *the assumption of risk of the factor* waits for refining. The international regulation formulates the assumption of risk of the factor as a protection opposite the indebted salary delay. The domestic regulation talks opposite to this about the providing of security in case of the not or delayed completing of the obliged. There isn't here providing of security neither in everyday nor in legal sense, so this type of definition is wrong. The factor rather takes over the risk, which origin from his indebted non-payment, from his insolvency concerning a deriving, from his delayed payment, so the factor can't turn with compensation claim in opposition to the original authorised.

The fourth service masks the *taking of the claims*, but the draft uses instead of the taking of the claims the validation of the claim that its semantic content considering does not depart from the international rules.

I do not keep for a correct point of view to name the *accounting liability* as a fifth service.

The accounting liability of the factor results from general rules of the contract-law, or it would get richer by equivalent without a legal ground.

The draft says that the factor has to supply two from the services.
It follows from this that it may be a case when the factor does not select this service.
Does the factor not have to account for the grantor at this time?

So unnecessary and disturbing to name the accounting liability as a separate service, and we do not find example concerning this neither between the international rules, nor in the literature.

I do not agree completely with the approach of the domestic draft and the international regulation. The factoring is already unimaginable today without financing, so this is an indispensable element of the factor's obligations which cannot be substituted and we may handle the service packet compared to this simply, from which the factor supplies certain activities.

The register of the claims and taking these are attached likewise necessarily to the activity of the factor in the practice if we make it compulsory, if not. Anyway possible element is the assumption of risk for the leviable of the claim, for the solvency of the indebted.
38.

The *rules which are connected to the indebted rights and obligations* play an important role in connection with contractual relationship of the factoring. It would be necessary to strengthen the creditor's defensive rules, opposite the debtor protection in the international and in the domestic regulation, with this reducing the risk of the factoring transaction. The regulations of the

Ptk. and UNIDROIT Convention would require a modification in the interest of this equally.

The debtor could bring up such objections opposite the factor that origin from the contract which constituting grounds for the claim, with the limitation that the objection has to exist and has to be enforceable at the time of the notification. (This means that a claim originated from the existed legal ground following the notification cannot be enforced opposite the factor.)

It would all be necessary to exclude the indebted's reclamation right in the provisions of the UNIDROIT Convention, all though in Ptk. rules.

The exclusion of the debtor's reclamation right opposite the factor would not mean that the obliged may not enforce his claim deriving from the mistake of the contract opposite the grantor. 39.

Determinable that the factoring is a new legal institution all in the international, all in the domestic regulation equally

The legislation has to regulate the contractual relationship in detail anyway because of the beneficent economic significance.

The *utilizing of the research's results* comprise for more of the areas of the jurisprudence, but primary furthers the development of science of the financial, the civil and the commercial law.

The thesis points out problems to be solved concerning all the financial law, all the civil and commercial law legislation, and draws up solution proposals, alternatives.

The treatise reveals the anomalies beyond the legislation in the dispensation of justice and in the judicial custom, furthering the uniform law administration interpretation.

The work concentrates strongly onto the solution of problems came up in the practice, so it's direct practical adaptability come up to the financial institutions' contractual practice in this manner

The treatise implies statements that may be used in the syllabus of the subjects taught by the author furthermore.

IV.

THE CATALOGUE OF THE PUBLICATIONS FROM THE SUBJECT MATTER OF THE DISSERTATION

1. The first steps of the forming of the two-tier banking system on Hungary (1987-1989)
   In: Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica, Tomus XXI/2. Miskolc, 2003. 435-448. p.

2. The criticism of the rules of the insolvency procedures (co-author)
   In: Competitio, Debrecen, 2004/3. 111-138. p.

3. The problems of the creditors' interest enforcement in the liquidation procedure (co-author)
   In: Wage guarantee and the reform of the bankruptcy and liquidation procedure (Editors: Dr. Péter Miskolczi Bodnár – Dr. Tamás Prugberger), Novotni Publisher, Miskolc, 2005. 171-178. p.

4. The question of the state responsibility in connection with property distractions in the mirror of the judicial custom
   Economy and Law, Budapest, 2006/10. sz. 15-21. p.

5. The problem of law security's lapse in connection with the factoring contractual relationship
   In: Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica, Tomus XXIV. Miskolc, 2006. 281-293. p.

6. The theoretical approach of the concept of the factoring, and its interpretation
   In: Publicationes Universitatis Miskolcinensis, Sectio Juridica et Politica, Tomus XXV. Miskolc, 2007. 373-404. p.

7. The aspects of the public law regulation of the factoring in Hungary
   In: Miskolc Law Review, Miskolc 2007/2. sz. 72-91. p.

8. The factoring as loan stretching activity
   In: Credit Bank Review, budapest 2007/5. sz. 453-468. p.

9. The institution background of the factoring
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10. Theoretical principles of the classification of factoring deals

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11. The legal regulation of the monetary organism and an activity
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12. The legal regulation of the monetary organism and an activity
In: Economic Public Law (Editor: Dr. Géza Károlyi) University of Debrecen Kossuth University Press, Debrecen, 2006. 239-270. p.

13. The system of the legal regulation of the international factoring from the aspect of the theory and the practice
In: Festive studies to Professor Dr. Tamás Prugberger's 70. birthday (Editor: Dr. Csilla Csák) Novotni Publisher, Miskolc, 2007. 263-279. p.

14. The historical development of the modern financing factoring (under publication)