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ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

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LEGAL ANALYSIS OF MONEY AS THE OBJECT OF CIVIL RIGHTS

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ANNOTATION

The article examines the legal nature of money, its definition, and its main features. In this material, a comparative analysis of civil law rules in the UK, Kazakhstan, and Russia is carried out. The article focuses on the evolution of money and its modern understanding. The paper indicates that legal and economic theories take different positions about money. The author points out that in India all kinds of assets can be used as money in case of monetary obligation. The paper describes the statements of main Russian scientists such as Sukhanov who notes that money should be considered in two main ways as an asset and property right. The author notes that economic theory expresses different positions where all should be considered as money if they provide the functions of money.

Keywords: money, bank, property, claim right, banknotes, asset.

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FUQAROLIK HUQUQ OBEKTI SIFATIDA PULNING HUQUQIY TAHLILI

ANNOTASIYA

Maqolada pulning huquqiy tabiati, ularning ta'rifi va asosiy xususiyatlari ko'rib chiqiladi. Ushbu materialda Buyuk Britaniya, Qozog'iston va Rossiya fuqarolik-huquqiy normalarining qiyosiy tahlili o'tkaziladi. Maqola pul evolyutsiyasi va uning zamonaviy tushunchasiga qaratilgan. Hujjatda huquqiy va iqtisodiy nazariya pulga nisbatan har xil pozitsiyada ekanligi ko'rsatilgan. Muallifning ta'kidlashicha, Hindistonda barcha turdagi aktivlar pul majburiyatida pul sifatida ishlatilishi mumkin. Maqolada Rossiyaning asosiy olimlari Suxanovning so'zlari tasvirlangan, ular pulni aktiv va mulk huquqi sifatida ikki asosiy jihatdan ko'rib chiqish kerakligini ta'kidlaydi.

Kalit so'zlar: pul, bank, mulk, da'vo huquqi, banknotalar, ashyo.

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ПРАВОВОЙ АНАЛИЗ ДЕНЕГ КАК ОБЪЕКТ ГРАЖДАНСКИХ ПРАВ

АННОТАЦИЯ

В статье исследуется правовая природа денег, их определение и основные признаки. В данном материале проводится сравнительный анализ норм гражданского права Великобритании, Казахстана и России. Статья концентрируется на эволюции денег и их современном понимании. В статье указывается, что правовая и экономическая теория занимает разные позиции в отношении к деньгам. Автор отмечает, что в Индии в качестве денег при денежном обязательстве могут быть использованы все виды активов. В статье приводятся высказывания таких ведущих российских ученых, как Суханова, который отмечает, что деньги следует рассматривать в двух основных аспектах, как актив и право собственности. Автор замечает, что в экономической теории высказываются иные положения, согласно которым деньгами следует считать все, если они выполняют функции денег.

Ключевые слова: деньги, банк, имущество, право требования, банкнота, вещь.

The term money is used regularly because money prevails and plays the main central role in human life. In this article, we shall describe the two main and different positions and statements from economic and legal theory.

In economic theory, money is anything that is usually accepted as an exchange for goods and services, accepted not as an object of consumption, but as an object granting purchasing power to a temporary holder to purchase other goods and services [1.P.16]. Based on works from monetary theory money has three main features: 1) a medium of exchange; 2) a measure of value; 3) accumulation of value [2.P.49.51].

Based on public law regulation principles the law set forth money act as a medium of exchange. In theory, it is noted that money is a legal tender that cannot be refused to accept by the creditor in case of payment by the debtor. [3.P.45-46].

In Uzbekistan as a measure of value prices for goods (works, services) are determined only in the national currency (sum) [4.P.9]. If money is considered a legal tender, the debtor is liable for non-fulfillment of payment debt. In the case of illegal use of another person's funds, which allows different reasons (illegal withholding, evasion of refund, default in payment, unjustified receipt), interest on the amount of such illegal use of funds shall be accumulated [5.P.327].

Studying the phenomenon of money and its surrogates requires us to describe the evolution of money. For the legal study, the most important point is the legal position of money theory in civil law, whether money is property or a property right.

During the era of the subsistence economy, people did not need money. The consumers produced all necessary products themselves. Barter began to be used in civil circulation until the development of productivity and it made barter an inconvenient means to satisfy needs. This led to the appearance of some goods that started acting as money with the progressive birth of its function as a measure of value. Gradually, these goods transformed into the present money we use in our life [6].

Lunts L.A. is one of the greatest authors who made great research on the legal nature of money. In his book, he pointed out that money is a medium of exchange, and its legal force is determined by the state [7.P.27]. We can state that the legislative power of money to acquire property and benefits determines the purchasing power of money. According to Lunts L.A., the state has determined that money is a medium of exchange. For example, in the Republic of Uzbekistan, all settlements and payments for goods, works, and services must be made in the currency of the Republic of Uzbekistan (sum) [8], but the law defines exceptions.

In the Republic of Uzbekistan, there is no legal definition of the term "money". According to Article 81 of the Civil Code of the Republic of Uzbekistan, money is an object of civil rights [9.P.47]. Article 94 of the Civil Code of the Republic of Uzbekistan determines that the monetary unit is sum, which in turn is legal tender.

We can say that the objects of civil rights include assets, property rights, intangible assets, personal non-property benefits, and actions (works and services) [10.P.301]. Even though the legislator does not provide a clear definition of the concept of "money", we can state that money is

an object of civil rights, and money can act as an object of property rights according to Article 169 of the Civil Code of the Republic of Uzbekistan.

It is noteworthy that Russian legislation, as in Uzbekistani, does not regulate a uniform definition of the concept of “money”. In the US, money means a medium of exchange that is currently admitted or accepted by a local (US) or foreign country. This term includes a monetary unit of calculation adopted by an intergovernmental organization or an agreement between two or more states [11]. It can also be noted that the Indian legislator stipulates a broader interpretation of the concept of money. Money means India’s legal tender or foreign currency, cheque, bill of exchange, draft, letter of credit, invoice, payment order, traveler’s check, payment instruction, postal or wire order, or other instrument recognized by the Reserve Bank of India when it used to execute obligation or exchange of India’s legal tender with another instrument, but does not include any currencies of numismatic value [12].

According to article 40 of Law on Central bank of the Republic of Uzbekistan (№154-I dated 21.12.1995 y.), the Central Bank of the Republic of Uzbekistan is the only authorized to issue banknotes, coins, and precious metals. These monetary units are an unconditional obligation of the Central Bank and are secured by all its assets [13.P.5]. It can be noted that this kind of money is fiat money. Fiat money does not have an independent value and a guarantee of their exchange for other assets (binding exchange rate or to gold) [14.P.7]. In simple words, we can state that fiat money is money secured solely based on trust in the state which issues such money [15.P.144]. According to Friedman, fiat money is money only because the state requires its recognition as money and rests on the opinion and belief of people that such money has value [16].

In contrast to the Civil Code of the Republic of Uzbekistan which does not provide regulation on the concept of “money”, the position of the Civil Codes of Kazakhstan and the Russian Federation is different. In particular, the Civil Code of Kazakhstan defines that property benefits include money, foreign currency, financial instruments, property rights, digital assets, and other property. The legal regime of assets or property rights shall be applied to money and rights under a pecuniary obligation [17]. The Civil Code of the Russian Federation determines that objects of civil rights include things (including **cash** and documentary securities), other property, including property rights (including non-cash **funds**, books-, digital rights); results of work, and provision of services; protected results of intellectual activity and equivalent means of individualization (intellectual property); intangible benefits [18].

The author believes that exchanging money for a certain commodity demonstrates that money performs the function of a commodity. If we consider money as a commodity (asset), it shall have features of property according to civil law. According to Article 164 of the Civil Code of the Republic of Uzbekistan, the right of ownership means the authority to possess, utilize and dispose property at own discretion and in own interests, as well as to demand the elimination of any violations against property rights, no matter who they come from. Therefore, the above-mentioned rules should also apply to money.

Considering the unique features of money, we can use it in limited cases compared to other assets, for example, a car. A person can use cash as a means of payment. According to the literal interpretation of Article 81 of the Civil Code of the Republic of Uzbekistan, “ objects of civil rights include assets, including money and securities ... ”, that is, the civil code refers to money as a subcategory to the general category “asset”. In civil law, an asset is usually considered as an object of the surrounding world that has a material form and a certain value for a person [19, C.99]. According to the position of Grishaev S.P., an asset is an object of the material world, which has its definite boundaries, distinguishing it from other objects and, above all, from other assets. It is stated we can surely state that an asset is an object of civil rights due to the ability to satisfy human needs. Items not having useful features or items whose use has not been determined, at this stage in the development of human civilization, for example, cosmic bodies cannot be objects of civil relations [20.P.175]. Accordingly, the asset is the object of the material world.

However, it is necessary to express the position of the doctrine about money as an asset. The author intends to express one of the modern and based on market rules recommendations of Babushkina A.V. The researcher makes a statement that to study money as an object of civil rights, only the economic nature of money is important for determining legal reality and its legal basis [21.P.68, 72]. Bychkov A.A. notes that money is movable, and it has more functions and superiority over other movable values, which are not ignored by legal science [22.P.365, 367].

As we can see from the above normative rules and doctrine, money is a special phenomenon

both in the economic and legal system. L.G. Efimova notes that during studying the process of formation and evaluation of money, it is wrong to discuss the legal nature of money in general. However, she notes that it's required to study only a specific type of property benefits (legal regime and its legal nature) that performs and acts as money [23.P.181-197].

The discussion about the legal nature of money remains relevant not only in Russian law but also in the law of developed jurisdictions. For example, in the UK, only banknotes and coins issued by the Bank of England and the Royal Mint respectively, are recognized as money used as payment. The legislator does not recognize them as a commodity or other assets. It should be emphasized that the legislator does not recognize cash balances on current accounts and electronic money as money. However applying an economic approach to determining the status of money, the law admits the use of bank money and electronic money in settlements. The law and theoretical doctrine indicate that the bank money existing in an intangible form, should be recognized as a claim right of the bank account holder against the bank or accepted as a property right – “claims to money in intangible form” [24.P.1193, 1194].

If we pay attention to Russian doctrine, Sukhanov E.A. notes that the legal nature of money is quite debatable, and they take a special position in civil law. It is noted that money can act as a commodity as an independent object of some transactions, such as money loans and bank credit agreements. He notes that cash cannot be claimed from a bona fide purchaser based on paragraph 3 of Art. 302 of the Civil Code of the Russian Federation. Under the development of information technology, non-cash payments prevail in goods turnover compared to cash, money is already accumulated in bank accounts or the deposit account of the owner. Cash in bank accounts (non-cash money) is already an integral part of the goods turnover, acting as a means of payment and as a separate product. The owners of non-cash money have the right to freely transfer to cash, which assures their high degree of liquidity. Any creditor must accept money provided by the debtor to fulfill the obligation. The scientist notes that non-cash money (bank money) performs the function of money. Therefore, the scientist explains the position of economists that money can be considered as both cash and bank money.

However, Sukhanov E.A. notes that bank money cannot be considered an asset because of its civil law nature, but can be considered as a claim right. The latter in civil law is considered money. We should mention one more time, that bank money cannot be considered legal tender. The reason for this position is that holders and owners of bank money in the Russian Federation are limited in rights to convert non-cash money into cash, and the use of non-cash money itself is limited by the law. By Article 855 of the Civil Code of the Russian Federation, if the bank account balance is not sufficient to fulfill the payment order, the payment queue or schedule must be set forth. In addition, the owner has a legal risk of losing non-cash money in case of bank insolvency, which proves the reduced value of such non-cash money compared to cash in these conditions of rules. The claim right equally with bank money can be considered as composition and concept of property, as well as an integral part of the property complex (enterprise). The scientist notes that referring to bank money as the objects of the law of obligations excludes the possibility of considering such money as objects of property law - an asset [25.P.318-319]. K.T. Trofimova takes the same position as Sukhanov E.A. and notes that money should be considered property, and additionally as a measure of value, money participates in setting the price of non-property relations [26.P.131].

Summing up the works of Russian scientists on the legal nature of non-cash money, we can group them into two opposite positions:

1) Non-cash money is a special category that has a proprietary nature (K. Trofimov, L. G. Efimova, O. M. Oleinik);

2) Non-cash money is a property right (the client's right to claim against the bank), which is binding (M. I. Braginsky, E. A. Sukhanov, L. A. Novoselova) [27.P.277-279].

As noted above, the term “money” is used to express the term “non-cash money.” It is noteworthy that in Uzbekistan, we understood cash and money deposits, as well as funds in bank accounts, like money. [28].

Conclusion. The author intends to describe the position of Uzbek civil law about money. As we can see, money is considered an asset, but the foreign doctrines express controversy and positions against money. For example, in Kazakhstan and Russia, money expressed in banknotes and coins should be considered an asset. However, bank money or non-cash money should be considered a property right because the owner of a bank account has a claim right to money against the bank.

In comparison to legal doctrine, economic theory takes a unique position, and according to

their theory, all should be considered money if they act and provide the functions of money: 1) a medium of exchange; 2) a unit of measurement, and 3) the accumulation of value.

The author considers that it's necessary to elaborate on studies on the concept of money in Uzbek civil law and provide clear identification of the legal nature of money in civil law.

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