New Perspectives on Contractual Law in the Context of Real Contracts in the Systems of International Contemporary (Roman) Law

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Abstract

This scientific paper aims at exploring and establishing whether national legal gaps or possible issues within the differences in the international contractual law of the European Union's member countries and non-EU member countries can result in possible difficulties. In case there are legal problems and difficulties or practical concerns in this field, should the functioning of the internal trade and legal function through its interpretation hinder the process between the contracting parties in the event of entering a contract of international and interstate character within the law of obligations, and in cases of entering a contract, during its interpretation, while determining the rights and obligations or during other legal issues which have to do with the implementation of international private law and European international private law. Viewed from this angle, we need to consider the national and international private contractual law in the aspect of harmonization of the contractual law which may result in inconsistencies on a European level and broader. This would present an obstacle which restricts the fundamental legal-private rights of citizens as an advantage of individuals. They consist of three parts: personal relations between citizens, property relations between persons entitled as property trustees, as well as the procedural law which regulates the protection of subjective rights of personal and ownership nature. In practice, these face more difficulties in the private international law and European private international law, for example in: rules on property, ownership, real rights on other people's belongings, liabilities and heritage in international character and elements.

Keywords: common international market, law, European Union, contract, unification, contractual character of loans -*mutuum,* use of loan - *comomdatum,* mortgages - *pignus,* the position of the parties in private international law.

1. The Roman real contracts and their influence in the legal system from the international viewpoint

The regulations of the law and those of the private law were kept and protected for a long period as one of the essential principles on the issue of the emergence of obligations and duties arising from real contracts and their influence in the private law within the system of the national and international law. The Law of Obligations is a set of legal rules which regulate the obligatory relations, respectively the relations in which one party, *the creditor* is authorized to request from the other party, the *debtor* to carry out any action which should be fulfilled by the other party. The main characteristics of the Law of Obligations are: the relativity of obligatory relations, the disposition of the obligatory relations and the action as an object of obligatory relations. The relativity of obligatory relations means that the relations of obligations act on its own between the parties which are in concrete obligatory relations and in reality these duties are also included in the content of the Real Contract.

2. Roman Law or *Ius romanus*

Roman law or *Ius romanus* otherwise known in the Roman Empire did not stop here, but the need of judicial and economical communication also demanded new paths which would mean more than duties and obligations being created only through written contract because every written document may be best protected in a legal or procedural aspect.[1] Relying also in the contemporary laws of Republic of Macedonia, we may say that the *private law – or Ius privatum* includes personal rights, property rights and procedural rights. Viewed from in this context, the private law and the contracts in our country, which are in general protected by the laws of the state and international laws, are of consensual character, which means that nobody can force someone to make a contractual agreement without the will of both parties. Hence, we can say that Republic of Macedonia and its legislation practices Consensual Contracts. Whereas, when we discuss real contracts we

[1] Bashkim Selmani, Ph. D., *E Drejta Romake dhe Ndikmi i Saj në Sistemet e së Drejtës Bashkëkohore* p. 467-493. Publisher: State University of Tetovo. Tetovo, 2013.

can conclude that these types of contracts appear mostly in the banking systems, where a number of citizens hold creditor obligations, and as a guarantee to the banks they apply the practice of putting the estate to Mortgage.[1]

3. The emergence of real contracts in the system of contemporary banking Law

The *Roman* real contracts and their influence in the system of the national and international law, tends to learn which are the factors that influence when entering a real contract, such as; *mortgage, deposits, pledge, hand pledge, loan, use of the loans* as well as duties arising from the contracting between parties in the private law of the Legal System of Republic of Macedonia, of the international private law and of the European international law. In this context, from this scientific paper which discusses the real contracts we can conclude that these types of contracts appear mostly within the banking systems, where a number of citizens have creditor obligations, and as a guarantee towards the bank they apply the practice of putting the estate to Mortgage. We intend to ascertain the actual situation of the position of contracting parties in a state and in an international level in order to research the real rights between the contracting parties and the legal sources which regulate the contractual rights within the private law. In this Master of Laws thesis we will also turn to the topic of private law and in general to the civil law, because from these study subjects derive all aspects of the contractual law from ancient times until today. We can also mention here the modern societies in which in general the Roman law has had its effect and the same is being used by the largest legal systems of the modern Law. In this aspect we can mention: The role of the obligatory subjects in a judicial relation of obligations, as well as the legal-civil rights based on the real contracts. For example: loan-mutuum, use of loan-comomdatum, mortgage-pignus and the position of the parties in a national level, international level and in the EU international private law. Real contracts and the contractual law will be treated as a special part of the national civil law, international civil law and the EU international private law. We will also include the Law of Obligations and the civil and legal law by means of mortgage, as well as the role of the parties within national civil and legal position, the international private law and the EU international law.

4. Freedom of regulation of contractual relations has enabled the creation of international contracts

- The evaluation of specific features of the rights of contractual obligations as well as the position of the real situation in legal defense in case of lack of fulfillment of the obligations between the contractual parties in real law, internationally. –
- The role of the obligatory subjects in a legal relation of obligation, as well as the legal-civil rights in a legal dispute of international nature.
- A reflection through an analytical approach and a scientific research foreseen in the role of real contracts-*reals contract* as well as the invalidity role and the position from the difference consequences; *persons who may act even when the contract is banned* in a national level, international level and the EU international private law.

The freedom of regulating the contractual relations has enabled the creation of numerous and various contracts in the historical-legal aspect in many large legal systems in the past and the same will continue to be as valuable in the future in the system of the private law and real law in general. By using the examples of the so-called "good practices", appear also some of the latest recommendations of the European Council which deal with the international private law that also include the real contracts, legal-civil procedures on the contractual and procedural law on which this scientific master thesis is also based.

5. The role and the position of real contracts - loans-*mutuum,* use of loans-c*omomdatum,* mortgage- *pignus*

***Real contracts* – this cathegory** includes four contracts: *mutuum-loans, commodatum- loan use, depositum-deposits* and *pignus - mortgages.* Their common feature was that the obligations under these contracts emerged from submitting of something corporal, and exactly from this derives the word contract - *re,* meaning, from a delivered certain item.[2] The real form of entering a contract was through delivering an item which was the only sign that the contractors agree to enter a contract. Hence, *obligatio re contracta* introduced the obligation which derived from delivering

[1] Endru Borkovski & Pol du Plesis *Textbook on Roman Law* p. 4-11. – Third Edition. Publisher: Prosvetno dello Ad, Skopje, 2009.
[2] Refer to, Metzger,Componion,182-9

an item - *res,* which than produced the obligation to return the same. In the institutes of *Gaius* a real contract was considered exclusively the *loan*, which was being carried out through the transfer of the item's ownership in order to determine obtaining *tantendum* (the same amount of identical items). Though it was bringing or *causing* the emergence of a new *obligatio re contracta,* the case of *solutio indebiti* by *Gaius* was not considered as *obligatio ex contractu,* from the moment when, according to this jurisprudent, he who was paying more than it was decided within the contract, aimed at quenching such an existing bind. The delivery was a form of binding through a real contract when it was done on the basis of loans, use of loans, deposits and mortgages. At the time of Justinian ruled the regulation that the delivery in whatever legal basis served as a form of entering a contract. Through the introduction of the use of loans, deposits and mortgages as real contracts - *obligation re*, which before meant bringing an item to ownership, it took a different meaning according to the type of a real contract. Thus, for example, in the case of the mortgage it only caused the transfer of ownership, whereas in the case of the contract for use of loans and of deposits it generated the right to hold possession of the item. The loan contract demands the return of the same amount of the same items, whereas other real contracts demanded the return of the very same item.[1]

The loan -*mutuum*i presented a one party contract and *stricti iuris,* which in essence consisted of a complimentary *loan* for the consumption of things which were measurable and which were consumable through their use, meaning *fungible* or usable, replaceable often with an amount of money. The real contract is the most ancient and most important. It was a one party strict contract created by delivering substitute items owned by the debtor, who was obliging that on the request of the creditor or on the predetermined time frame to pay the same amount of replaceable items. For the loan to occur it was demanded to: deliver an item; the item to be replaceable; the item to pass into debtor's ownership. The delivery of the item was possible to be executed in any possible way. This contract was concluded through the transfer of ownership of a certain amount of money or a certain amount of other replaceable items from one subject *the debtor* to another subject, *the creditor*, implying the obligation for the receiver of the loan to return to the lender a certain amount of items of the same type and quality *tandundem eiusdem generis.* There exists a delegation or an authorization of the debtor to borrow the object from a certain person who was obliged to implement the delegation. Whereas, the promise for giving only held legal effects if the same was conducted in the form of *stipulatio.* The loan was conducted only through *datio rei of giving the item*, or delivering the item, which consisted of a *traditio* of the ownership.[2] Only replaceable items were allowed to be borrowing objects. The debtor, borrower, was compelled to return, not the same item, but the same quantity of identical items. For as long as the delivery of items was passed to the borrower's ownership, only the owner of the object of the loan was authorized to bind a contract. The delivery by the non-owner did not include the establishment of the property of the debtor over the obtained object. The creditor, in situations when the borrower lacked fulfilling the obligation, had the right to be protected through the following indictments: a. *actio certae creditae pecunia,* if the loan consisted of a sum of money, *b. condictio certae rei* (which in Justinian law was known as *conditio triticaria,* if the loan object was any other replaceable item.[3] The loan contract was protected through severe lawsuits. Those could be refused when the creditor would require more, when his request was done ahead of time or not at the place designated in the contract. Being a one side contract the loan was tailored to give rights to the creditor and obligations to the debtor only. The creditor had the right of requesting the return of the same amount of the identical items. He had no other right, no option of requesting any type of reimbursement or interest. The debtor's basic obligation was to pay the creditor the same amount of identical items. No more, no less. This occurred since the contract in essence was done for free. This obligation was carried out by the debtor, be it within the determined time frame or upon request by the creditor when there was no determined time frame. During the Vespasan principality, in 1st century AD, a special rule, filed through a *senatusconsultum Macedonianum,* determined the ban of lending money to family children *filii familias.* From the Greek law, the Roman law borrowed a particular piece related to the lending contract. This is the so-called *fenus nauticum.* With *fenus nauticum* we understand the case of money borrowing which was supposed to be transported through see by the borrower and to be used for buying merchandise at the destination point, or to be used for buying merchandise meant to be shipped by sea.[4]

[1] Mandro Arta, Ph.D. „E drejta Romake" pag. 356-357.
[2] Paul, *Edkt, book 28:* The word loan for a consumer, *mutuum,* is formed from *meum* and *tuum, since what is mine becomes yours* (D.12.1.2.2).
[3] Endru Borkovski & Pol du Plesis *Textbook on Roman Law* p. 4-11. – Third Edition. Publisher: Prosvetno dello Ad, Skopje, 2009.

[4] The most frequent use of *mutuum* was related with money, it became a standard of the Republic's contract for borrowing money. Joining of suplementary terms through stipulations was common, for example, related to the interest needed to be payed or the date of repayment, since *mutuum* was completely free (Metzger, *Compan-iort,* 129).

Use of loan *commodatum*-was a real, two party contract, non-equal, which was established through delivery of a certain irreplaceable item in use, free of charge, to a provisional borrower, who then would pledge that he would keep the item, will use it properly and according to the contracted use, will return the item to the lender. Subject to contract of the loan use contract could have been only irreplaceable items and in order for the contract to emerge, the item, subject to contract, was supposed to be returned back. At the moment of closing the contract for the giver of the loan use emerged only rights, and for the taker only obligations. The basic right of the lender of the use of loan was the right to require from the borrower to keep the object of the loan, to use it according to the agreement and, at the determined place and time, return the same undamaged. The obligations of the borrower of the use of loan were in correlation with the rights of lender. The borrower was responsible for all his obligations; furthermore also for the damage to the lent object from action of force majeure in cases this action could have been foreseen and avoided. In seldom cases, according to the contract of the loan use, the borrower may also enjoy certain rights. For example when the borrower had suffered certain damage due to the lenders irresponsible attitude, as well as when due to the damages within the object he was forced to spend a certain sum of money for its maintenance.

Commodatum consisted of a cost free loan for something physical to use, which was supposed to be returned in the end of the loan term. Unlike *mutuum*, the ownership of the object remained to the lender. This was a two party contract and a *bonae fidei*, the development of which was mostly influenced by the praetorian intervention. The borrowing was supposed to be free. If money were included, the contract would have been *locatio conductio*, and not *commodatum*. The borrowing was usually issued for one purpose and for a settled duration, and if the duration was not set, the borrower was able to keep the object for a reasonable time considering the goal of the borrowing.

Land may be subject to *commodatum*, although this was doubtful before the classical era the food that could be spoiled could not be a subject to it. However, there were minor exceptions, for example, when things where given for exhibition purposes.[1] Unlike the borrower's case, here one could not claim ownership. One could not even claim the ownership of the object, but only the physical control. This way, there could be a valuable *commodatum* even in cases when the lender was not the owner. [2]

The obligations of the borrower – *He* was supposed to use the property for purposes agreed, otherwise he was responsible for theft, and unless he honestly believed that the lender would approve the same. However, even if the borrower would believe this, it is normal that he would have been responsible for any type of damage caused to the property during its unauthorized use, though deliberately, even for damage through *vis maior*. Furthermore, the borrower was responsible for any type of damage, regardless of the way it could have occurred, whether in cases under *mora*, for example, when one would delay in returning the property. [3]The basic standard of care needed to be applied towards the objects borrowed for use, is the care which would have been given by every *head of family who is considerate* about his private businesses which means that the borrower is excluded from his responsibility only in cases of events he is not able to prevent**, such as the death of slaves, not being his responsibility, such as unexpected robbery or hostility from pirates, ship flooding, fire and escape of the slaves who usually were kept untied.** [4]

*The duties of the lender – H***e was supposed to allow the borrower to use the object during the agreed period, but if the borrower would misuse the property, the lender needed to get compensation or return of the property, immediately. The lender needed to compensate the borrower for all kinds of irregular expenses emerged during the use of the object and legally the borrower was allowed to keep the object until these expenses were cleared. Apparently, the lender was not responsible for the negligence, but only for the *dolus*. Therefore, he was responsible for the damage caused from an object, in cases he was aware for the defects and had not informed about them.[5]**

[1] Refer to: (D.13.6.3.6.).
[2] In fact a thief was able to be a lender, with the right to a lawsuit as regards the contract.
[3] Gaius, *Provincial Edict, book 9:* (D.13.6.18pr). .
[4] Ulpian, *Edict, book28:* If the item borrowed is returned damaged, it was considered as not being returned at all, except in cases this was in the interest of the lender (D.13.6.3.1).
[5] Gaius, *ProvindalEdict, book 9:* Again, someone who intentionally lends a damaged container should be punished if the wine or the oil in it gets polluted or spilled (D.13.6.18.3).

Common benefit- **In cases when the borrowing would serve both parties, then it turns out that the borrower was prone to the host standard, expected from him for his own work matters *diligentia quam suis rebus.* If the borrowing was only benefiting the lender, the borrower was only responsible for *dolus.*[1]** The deposit was the unequal two-party contract established by the delivery of an irreplaceable deposit to the taker who pledged to take care of the item for free and upon request from the deposit-giver or after the predetermined contracted time frame would return it without any damage. Hence, object of deposit contracts were irreplaceable items. The deposit-giver had the right to demand from the deposit-taker to look after the trusted items and return them undamaged. Obligations of the deposit-taker were in correlation with the rights of the depositor. For his obligations, the deposit taker would only be held responsible when the damage of the item or the lack of fulfilling the obligation occurs due to his culpability; otherwise he was freed from any kind of responsibility.

The deposit taker, according to the deposit contract - The deposit taker, according to the deposit contract did not gain the right to use the item or the right to seek compensation for looking after the item. Since the deposit contract was a two party and not equal, the deposit-taker earned the right to seeking his assets when the item had been damaged or when looking after the item included expenses. The Roman law recognized three cases of exceptional deposits:

1. When the deposit-giver, due to unexpected circumstances like fire, earthquake, war, etc., was not able to choose the persons to whom he would entrust the preservation of the item.

2. The court deposit was a contract through which the opposing party would deliver the item to a third person, by obliging him that after the end of the court procedure to return the item to that party that had won the trial. In such cases the deposit-taker earned the intermediary possession which could protect him in all the interdicted *possessions.*

3. The irregular deposit was a deposit over replaceable items. The deposit-taker would become the owner of the entrusted items and by the request of the deposit-giver or within the contracted time frame was obliged to return the same amount of items of the same type. This type of a deposit resembles immensely the loan contract. The difference between them is that the loan contract dealt with the debtor's interests, whereas the deposit with the interests of the deposit-giver.[2]

The pledge- *pignus- Pignus, a pledge* meant a contract *bonae fidei* and a two-party contract, which consisted in transferring the property from the borrower as insurance for the lender in the form of a mortgage. The lender would hold legal possession of the property, be it land or movable property.

Development of Pignus - the pledge was developed from its original form of a real guarantee, *fiducia*, according to which the borrower transferred the property ownership which implied the pledge to the lender as a form of insurance. The transfer in *fiducia* needed to become valid through formal delivery, thus *mancipatio* or *cession in iure.* The lender bound to return the property after the debt was fully returned. However, being the owner, the lender could sell the land if the borrower did not pay. Besides the fact that it was inconvenient, *fiducia* had the disadvantage which deprived the borrower from the right of ownership over the object that was put as a pledge, until the debt was paid. *Pignus did not* face such disadvantages, if the transfer was able to be effective through *traditio* and the borrower kept the ownership, only by giving up from possession. However *fiducia did* not disappear until the late Empire, when the formal ways of transfer became obsolete. Its long survival happened due to the relative popularity of the lenders. They had more rights over the property compared to *pignus.*

***Fiducia* and *pignus* coexisted together for many centuries**

Therefore *fiducia* and *pignus* coexisted alongside for many centuries, although the second became the most usual form of a guarantee for immovable property. However, we need to emphasize that the difference between *fiducia-s* and *pignus* lied in the fact that the first was done free of charge and based on good trust, *pignus, and* the pledge was a form of a credit similar to the pledge that exists today in modern law. It was a real contract, accessory, two party, unequal which was done through the delivery of an irreplaceable item, to the creditor, who was authorized to posses the item, to sell it and from the price to retrieve the primary debt of the debtor in case of lack of fulfillment by the latter.

[1] Ulpian, *Edict, book 28:*
[2] Mandro Arta, Ph.D. ,,E drejta Romake" pag.359-356.

Based on this contract the creditor was obliged to protect the pledge object and return it undamaged, when the debtor would orderly fulfill his primary debt.

The pledge contract introduced two different groups of rights – From the pledge contract emerged two different groups of rights and obligations: The real right of the creditor to posses the pledged object. This right was conditioned since it was valid until the predetermined moment for fulfilling the primary obligation. When the debtor would fail to fulfill the obligation the creditor earned the right to sell the item, while making the debtor to provide the difference between the price and the value of the primary obligation. The second group of rights and obligations had an obligatory nature. The debtor had the right to demand the the protection of the item by the creditor, as well as its return if the primary obligation was paid on due time and regularly. Since the contract was a two-party, the creditor in certain cases was able to demand payment of claims that had appeared due to shortcomings of the pledged object and due to expenses for its maintenance.

The position of the parties in pignus – *Within the position in pignus the borrower* was responsible for the caused damage emerged from the defects in the transferred property as insurance, according to the standard of care *bonus paterfamilias.*[1] The lender took possession of the object, although in practice sometimes the borrower was allowed to have physical control. If the lender had the actual control in a random case, he was supposed to protect the property, thus apply the standard *bonus pater familias.* If the lender would misuse the property, the contract was disrupted. *If the creditor* would abuse the pledged property, this resulted with a lawsuit on the pledge. Hence, if he would force a slave into prostitution or forces her to commit *indecent* acts, *the pignus representing her* was abrogated immediately.[2] Namely, the pledge over a slave forced into prostitution ended. The lender had the right to get reimbursement of expenses for the time while taking care of the property. Any benefit he could get from the property was considered as compensation, discount for the loan. [3]

Lawsuits –The obligations of the lender were able to be imposed only if the borrower had paid its debt, when he was ready to carry out the payment, or when he would specifically prove its repayment.[4] However, if the borrower was not able to repay the debt, the primary position was that the lender could keep possession of the property as a guarantee until the debt was not paid, but he could not become its owner and he also could not sell or liquidate it in any way. In short, his position was not quite favorable. For this reason, it was common that the parties agree the lender to have the right of selling; in cases the debt was not returned. If the lender would sell the property for a higher price than the debt, he needed to account for any surplus since he had deducted the debt, the interests and the expenses for organizing the sales. The practice of allowing the lender to sell the property became so widespread that during the classical period it was understood in all types off contracts, except in cases when it was clearly excluded. Another bargain, usually conducted in practice was in cases when parties would agree the lender to gain ownership of the property if the debt was not paid on the determined date, meaning automatic deprivation of the right to property. However, such agreements were banned from Constantine. Nonetheless, a delayed form of deprivation from the right to property was possible according to a procedure dated from Middle Empire, through which the lender was able to make a request to the court in order to gain ownership after the due period of *usucapio*, except in cases when the borrower would pay the debt in the interim period.[5]

The mortgage - Regardless that *pignus* had more advantages for the borrower than *fiducia*, it however demanded the transfer of possession of the pledged item from the lender *pledge-taker*. The borrower would lose the benefits from the property, but he could now use this property to secure only one loan for a certain period. As a respond to the need for a more elastic way of a pledge contract, in the late Republic appeared a modified form *epignus* mortgage, based on which the lender was promised right over the property of the borrower in cases when the debt was not paid, while the borrower was holding ownership and possession rights.[6] The mortgage was maybe created from the practice through which the leaseholders would agree for the owner of the land to be able to seize

[1] Refer to, cf Inst. 3.14.4.
[2] Refer to, Ulpian, *Edict, book3,* (D. 13.7.24.3.).
[3] If the debt was returned, the lender should have returned the object, together with a supplement, for example when a race mare had given birth, if the mare was put as a pledge.
[4] *Fiducia*-an agreement *pactum fiduciae,* in order to transfer a property through a *mancipatio* or *in iurecessio,* by which the transfer-receiver undertook some obligations after the property transfer.
[5] Ulpian, *Edikt, book* 2S;
[6] Ulpian, *Edict, book 28,* Ulpian, *Edict, book 30, and* (D.163.18),(cf.Inst.3.14.3).

goods or crops, if the lease was not paid. The mortgage began to be applied in land pledging, but could be also applied for personal estates. According to a mortgage, the borrower was able to secure more than one loan over the same property deposited as a mortgage, meaning he could deposit the property as a mortgage more than once. This possibility demanded the development of regulations which had to do with the priority of liabilities. The basic regulation was that the priority was determined according to the order of the establishment of liabilities, meaning that the first pledge would prevail.[1] Since the priority of paying the debt, depended from the time of the establishment of the obligation, the borrower was obliged to inform a *new potential borrower*, about every existing liability in relation to the property. Failure to declare a prior liability was a criminal violation. In the Late Empire, the rules of the priority were substantially amended. Priority was given to the obligations that were formally registered or for which there was a witness, for example, the default mortgage of a wife over the property of her husband, as insurance for her rights over dowry.[2]

6. The modern use of contracts from a contemporary viewpoint

The modern use –The Roman contracts have undergone a great influence within the modern law. For example, the differences between the different types of borrowings have been kept, as in part 598-610 BGB and Articles 1874-1914 of the French *Civil Code*, as well as certain changes within the regulations on the standards for caretaking. Hence, the case of borrowing for use, part 599 BGB foresees that the borrower is responsible only for stubbornness and immense negligence, whereas Article 1880 of the *Civil Code* applies the test *bon pere de famille* for the duties of the borrower in taking care about the property. The Albanian legislation also is influenced by the Roman contracts. There are some exact special legal provisions foreseen in the private law which regulate the rights and obligations between the lender and the borrower or the relations between them. [3]

7. The objective of international cooperation

The objective of international cooperation of the European Union, through the Agreement of Rome dated March 25th, 1957 was the foundation for the international common market aiming at the stimulation and political alignment between member countries of the European Union and beyond to enhance the judicial cooperation between states and to facilitate the contractual judicial cooperation of a commercial character for free transportation of goods between countries through the harmonization of the contractual right for balanced development as insurance for the contractual rights and obligations between countries regulated by the public law. This also included the judicial regulation between natural persons and legal entities in interstate and international relations, as well as the unification of many civil codes related to common standards of the rights and obligations of civil justice of private-property and commercial nature.

The Republic of Albania has regulated this matter with its civil code, whereas the Republic of Kosovo and the Republic of Macedonia have regulated it through specific legal-civic provisions. [4] The British Law is also influenced by the Roman contracts, especially by *commo -ndatum, depositum and pignus*.[5] Hoping this paper will attract immensily the attention of lawyers, as well as by trying to eliminate some inaccuracies arising from this contract, I wish to have somewhat achieved the final objective: working on thesis in a worthy topic which will be useful for the future researchers in this field of civil-justice law related to loan contracts **-***mutuum,* **use of loans -** *comomdatum,* **pledges-** *pignus* and the position of the parties in the private law. I welcome all the recommendation and potential interventions in order to complement and advance the national private law, the international private law and the European international private law.

[1] Gaius, *Action on Mortgage, sole booc.* The creditor who firstly gave money and taken a mortgage is preferred, even if the debtor had agreed previously to put the property to pledge to someone else, again as a mortgage if he gets the credit, regardless that the credit was given in a later time. (D.20.4.11.).
[2] Borkowski Andrew & Plessis Du Paul *E Roman Law,* including an introduction and scientific editing by Spartak Ngjela pag.400-402
[3] Thorough analysis of the pledge by Holt CJKB në *Coggs v.Bernard* (1703) 2 Ld Ryan 909, 92, ER 107, mostly inspired by Roman regulations.
[4] Endru Borkovski & Pol du Plesis *Textbook on Roman Law* p. 4-11. – Third Edition. Publisher: Prosvetno dello Ad, Skopje, 2009.
[5] Refer to, Zimmermann, *Obligationa, p. 203*

Conclusion and suggestive recommendations

In concluding all the theoretical and practical data of this international scientific paper related to the international private law or *ius privatum*, and the European international private law, which includes almost the majority of states in the international systems, we may also conclude that this category incorporated four types of contracts: *mutuum*-loan, *commodatum*-use of loan, *depositum*-deposit and *pignus* – pledge, and a common feature of these was that the obligations under these contracts emerged form the delivery of something corporate. Exactly from this derives the name contract or *re,* meaning a delivered item. The real form of signing a contract was through the delivery of an item which was the only indicator that the contractors agree to make the contract. Therefore, *obligatio re contracta* brought around the obligation deriving from the delivered item *res, which then resulted in the obligation to return it to Roman law.*

According to the research of this scientific paper, we can state that the real contracts in national net-legislation were not so much applied as in the past, or they don't have the same legal-civil weight as before in the system of the Roman law. This paper was written through a scientific, empirical and investigative commitment, with which we reach the confirmation of presented hypothesis in the introductory part of the scientific paper. It discusses the role of the Roman real contracts and their influence in the system of national and international private law and on a European international private law.

Relying on the contemporary legislations of many countries we can conclude, according to the empirical data from the scientific research and to those surveyed; parties, contractual parties, judges, notaries, judicial and legal experts, pedagogues, as well as bailiffs, the contracts in our country, are in general protected through positive laws of the country and of those international. When referring to Macedonia, these are in fact of consensual nature by function. While when we discuss the real contracts in the private law within our legal system we can conclude that these types of contracts mostly appear in banking systems where a part of citizens or creditors who had loans, in the majority of cases up to 49 %, had put their real estates under mortgage. From what we could conclude through the survey with people from this category, the majority had put under mortgage their apartments, houses, as well as different real estates. Also, something worth pointing out is some features that emerged from the surveyors among whom the majority thought that every agreement should be made in a written form or a contractual form. 61% of the surveyors believed this, whereas a part of the surveyors of around 29% declared that there is no need for every agreement to be made in a written form because the given word should be kept. On the other hand, 10 % of the surveyors did not hold an opinion on how should it be acted or what the best form of action in such agreement cases should be, but their expression was refrained and a part of them believed that the majority of problems that appear is related to the visa issue in the Balkan countries and this constitutes an essential injustice which is in contradiction with the basic international legal-civil rights. It is important to unify private law and contractual law which is a basic right of the international civil law. We need to achieve a harmonization and modernization of the national, international and European international private law. The European Commission is aware of this issue, but the Balkan countries still don't enjoy this right in the proper point and level of the contracting parties in an international level because they face many administrative and bureaucratic difficulties. The European Union, being aware for these problematic issues accepted the intervention of academic and scientific circles who did foresee the unification of the private and the contractual law, as was the case with the ratification of the agreement adopted by the European Commission, dated May 19th, 2003, -68 def. This approved the action plan for the implementation of the contractual rights into a new European discipline. This action plan is in function even today as a "special frame" (CFR Common FRAME of Reference) of the terms, terminology, and specific principles of international character.

Viewed in this light, this is a relatively new process to us and to other Balkan countries, but the recent free movement of people has stirred even more this inter personal *ius quod ad personas pertinet,* inter item *ius quod ad res pertinet,* and inter procedural *ius quod ad actiones pertinet,* with foreign elements. It surely needs to undergo a more in-depth study and an in-depth research to these three basic elements at an international level which would be in the mutual inter-institutional and inter-personal interest related to the international private law and the European international private law of a legal-civil contractual character.

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CIVIL CODES OF A NUMBER OF STATES

Civil Code of Republic of Albania

Civil Procedure Code of Republic of Albania

Civil Code of Republic of Turkey

Civil Procedure Code of Republic of Turkey

Civil Code of Republic of Austria

Civil Code of Germany

Civil Code of Croatia

Civil Code of Slovenia

Civil Code of Macedonia