

SUMMARY

Key Words: Contract law, law of obligations, optional obligations, alternative obligations, occurrence of obligations, termination of obligations, replacement of obligations.

Subject matter: the norms of modern domestic civil legislation, the practice of their application, as well as the relevant provisions of the civil doctrine.

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The relevance of the research topic The most important task of regulating civil law is to ensure the stability of obligations, which, by mediating the movement of material goods, form the basis of the movement of goods and money. The development of market economic relations requires the construction of new models of obligations in civil law, which, in turn, create additional guarantees for participants in property turnover-the actual fulfillment of obligations.

One type of such obligation is optional obligation, which has significant economic potential. Due to a special element that complicates the relationship between the debtor and the creditor - the debtor's right to replace the main performance with an optional performance - optional obligations protect the interests of both the creditor who seeks to obtain the actual performance of the obligation and the debtor who acquires the right to replace the subject of the performance of the obligation.

For a long time of the development of Russian civil law, a serious obstacle to the recognition of optional obligations was the lack of their legal regulation at the level of codified acts. Since June 1, 2015, amendments to the Civil Code of the Russian Federation have entered into force, which for the first time in Russian history have fixed optional obligations in the general part of the law of obligations (Articles 308.2, 320.1 of the Civil Code of the Russian Federation). Only a correct understanding of the legislative structure of optional obligations will allow us to effectively use the civil law norms dedicated to them, and avoid contradictory judicial practice. Given the paucity of normative regulation of optional obligations, it seems necessary to present proposals for further improvement of their legal regulation.

The insufficiency of the existing regulatory framework, combined with the lack of theoretical research on optional obligations, gives rise to a non-uniform and contradictory judicial practice in dealing with relevant disputes. This is especially acute when the courts distinguish optional obligations from alternative obligations, from obligations complicated by compensation, as well as when determining the civil consequences of the death of the main subject of optional obligations. The compilation, analysis and evaluation of case law materials on optional obligations are necessary to increase the certainty of law enforcement practice in this area.

The purpose of the work: to analyze the scientific concepts of the theory of optional obligations, including their concept, features, functions, place among other obligations, the grounds for occurrence and termination, as well as the features of performance.

Objective:

1. to consider modern concepts of optional obligations in civil law science;
2. identify the features of optional obligations and, based on them, propose a definition of this concept;
3. identify the differences between optional obligations and alternative obligations;
4. identify and describe the differences between optional obligations and obligations complicated by compensation;
5. analyze the reasons for the emergence of optional obligations;
6. to disclose the specifics of the mechanism for terminating optional obligations.

Theoretical and practical significance of the study. The theoretical significance of the study lies in the fact that its provisions together form conclusions and proposals on optional obligations, including: the concept of optional obligations and its qualifying features; based on a comprehensive study of the relationship of optional obligations with other civil law structures; a

detailed civil law description of the grounds for the emergence and termination of optional obligations.

The practical significance of the work is confirmed by the fact that the paper presents proposals for improving civil legislation in the area under study—Article 308.2 of the Civil Code of the Russian Federation. In order to realize the potential inherent in the optional obligation, to distinguish it from related civil law structures and to effectively use its regulatory norms, we propose to supplement Article 308.2 with paragraph 2 of the following content: «2. The main performance and the optional performance are assumed to be equivalent, unless otherwise provided by the terms of the obligation.»

In addition, the results of the study can be used in the educational process when conducting classes on civil law.

The results of the study:

It seems that the concepts of optional obligations existing in modern civil law science, focusing on one or another feature of these obligations, do not fully reflect the essence of the structure under study, leaving many questions of fundamental importance for understanding these obligations unanswered. Thus, the regulatory concept does not provide an answer to the question of what happens to optional obligations at the "protective" stage of their existence. The protective and synthetic concepts raise an even more complex question: how is the debtor's "dispositive" right transformed into his "imperative" duty, and, more importantly, why? It should be noted that all the concepts considered leave out the scope of the study and the more important question: what is the reason for the inability to provide the main performance and whether this circumstance affects the fate of the optional obligation? We believe that the functional concept of optional obligations proposed by A.V. It will contribute to a correct understanding of the nature of optional obligations and the effective application of the relevant norms of the law of obligations by disclosing the practical functional purpose of the category under study. Thus, the optional obligation is aimed at performing the following functions: proper performance of the obligation; performance of the obligation in kind, guarantee; pre-acquired right to refuse to provide the main performance by providing optional performance; acquisition of the right to release from the obligation, protection of the bona fide party to the obligation; maintaining a balance of interests of the creditor and the debtor.

Under the subject of an optional obligation, we propose to understand specific things, work or services that the debtor is obliged to transfer, perform or provide to the creditor. Based on the nature of the optional obligation, it can be argued that it is a single-subject obligation. We believe that the terms "subject of the obligation" and "subject of the performance of the obligation" should be recognized as identical. In turn, the object of the optional obligation is the actions of the debtor aimed at providing the main performance to the creditor. In this sense, the optional obligation contains only one object, similar to the subject. The object of the performance of an optional obligation must be considered those actions that the debtor has the right to perform in order to properly perform the obligation. By virtue of the debtor's right to replace the main performance with an optional one, the object of performance in the optional obligation is characterized by multiplicity, which is manifested in the fact that the construction of the optional obligation recognizes the actions of the debtor to provide both the main and optional performance as the proper performance of the obligation. The subject of the main performance in an optional obligation is the actual subject of the optional obligation, i.e. the thing, work or service that the debtor is obliged to provide, perform or render to the creditor. The subject of optional performance is also a thing, work or service that the debtor has the right to provide, perform or render instead of providing the main performance.

Speaking about the complexity of the optional obligation, it should be noted that this "complexity" is manifested, first of all, through the special power of the debtor (and only him) to replace the main performance with an optional one. We believe that the right of the debtor of the optional obligation to grant the creditor not the main performance, but the optional one, is reasonably qualified as a second performance. The exercise of this power does not lead to the

emergence of a legal relationship, but to its change. The second right of the debtor in an optional obligation is a "secondary" legal entity, a legally changing legal fact. As a result of the exercise of such a second right, the debtor of the optional obligation commits a unilateral transaction. The above suggests that the legal regulation of optional obligations in Russian civil law requires further improvement.

Recommendations:

- in order to realize the potential inherent in the optional obligation, to distinguish it from related civil law structures and to effectively use its regulatory norms, we join the opinion of Yu. A. Scherenkova, who proposes to supplement Article 308.2 with paragraph 2 of the following content: «2. The main performance and the optional performance are assumed to be equivalent, unless otherwise provided by the terms of the obligation.»
- we consider it possible to recommend that participants in civil turnover, when choosing the construction of an optional obligation, identify, as far as possible, the subjects of the main and optional performance in order to eliminate possible disputes in the future as to what is meant by the proper subject of the obligation. Otherwise, it will be difficult to demand execution.