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Some remarks on the history and significance of the concept of "legal transaction" in a nutshell

Abstract

This study is a brief contribution to the history and significance of the concept of legal transaction (juridical act etc.).

First and foremost, the author investigates the Roman law antecedents, and emphasizes that the essence of legal transaction was described by the Roman jurisprudence using the terms "agere", "gerere", and "contrahere" (cf. Lab.–Ulp. D. 50, 16, 19).

As for the formation of the modern concept of juridical act, the author highlights that its roots can be traced back before the Pandectist legal science (see the definitions of Althusius, Nettelbladt, and Harpprecht), then the Pandectists' definition of legal transaction (cf. Windscheid) and its influence are scrutinized, with regard to modern Hungarian private law, too.

Keywords: legal transaction (juridical act), legal fact, legal relationship, Roman law, antecedents before the Pandectists, Pandectists, "pandectistic" system, general part of private law, Hungarian Civil Code (of 1959 and 2013)

I. Roman law antecedents

It is well-known – as was pointed out for instance by *Gerhard Dulckeit* as well – that there is no "clear and sophisticated" concept of legal transaction (juridical act) in Roman law.[1] Roman jurisprudence did not know and apply the "technical" term of legal transaction in the modern sense,[2] as it did not elaborate the general doctrine of legal

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1 G. Dulckeit, Zur Lehre vom Rechtsgeschäft im klassischen römischen Recht, in *Festschrift Fritz Schulz,* (Weimar, 1951) 150.

2 As fundamental literature for the questions of legal transactions, see e.g. W. Flume, *Rechtsakt und Rechtsverhältnis. Römische Jurisprudenz und modernrechtliches Denken,* (Paderborn, 1990); Idem: *Allgemeiner Teil des bürgerlichen Rechts II. Das Rechtsgeschäft,* (Berlin, Heidelberg and New York, 1992[4]); K. Larenz, *Allgemeiner Teil des deutschen bürgerlichen Rechts,* (München, 1989[7]) 314 et seq. We note that the concept of legal transaction – which is used in present study (in a technical legal

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transaction either.[3] As such, the abstract category of legal transaction (as a *terminus technicus*) cannot be found in the sources of Roman law;[4] furthermore, the rites of ancient Roman law cannot be considered as legal transactions in the modern sense; *András Bessenyő* plausibly points out that it would be a historically distorted approach.[5]

> The word *"negotium"* derives etymologically from the noun *"otium"*, being its negatory form, referring to business, public concerns, trade tasks, and difficulties. The noun *"negotium"* appears also in literary texts as having the same meaning; see for instance the famous Horace quote: *"Beatus ille qui procul negotiis"* (*Epod*. 2, 1).
> Although the word *"negotium"* appears quite often in the sources of Roman law (see e.g. Gai. 3, 140: *"Labeo negavit ullam vim hoc negotium habere"*; Gai. D. 18, 1, 35: *"Illud constat imperfectum esse negotium"*; Iul. D. 18, 2, 10: *"non potest videri bona fide negotium agi"*; Paul. D. 50, 17, 5: *"furiosus nullum negotium contrahere potest"*; Inst. 3, 19, 8: *"Furiosus nullum negotium gerere potest"*), it does not have the general, technical meaning of "legal transaction" as in modern legal Latin. For example, the denomination of *"negotium gestum"* depicts it illustratively (see the 5th title of the 3rd book of the Digest, called *"De negotiis gestis"*).[6]

Álvarez Suárez – analyzing the applicability of the modern term of legal transaction in Roman law[7] – stated briefly but precisely that the doctrine of legal transactions is a modern legal construction, which belongs to the general part of private law. Roman jurists were usually averse to abstractions, as they concentrated on specific cases, and, in addition, they had a purely procedural attitude, so they created neither the general doctrine of legal transactions,[8] nor the technical term of legal transaction.

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sense) – is not that "general" one, which is necessarily contemporaneous with the appearance of law; cf. Dulckeit, Zur Lehre vom Rechtsgeschäft im klassischen römischen Recht, 149.

3 Cf. V. Arangio-Ruiz, *Istituzioni di diritto romano,* (Napoli, 1989) 77.

4 Cf. E. Albertario, *Il diritto romano,* (Milano–Messina, 1940) 115, who states that the general doctrine and classification of *atto giuridico* was first constructed by the Pandectists in the 19th century, based on Roman legal sources from Justinian. In this context B. Albanese, *Gli atti negoziali nel diritto privato romano,* (Palermo, 1982) 7 points out that although the concept of legal transaction was elaborated by German *romanists,* it was constructed, from a certain aspect, by *Roman* jurists. Cf. e.g. A. Staffhorst, *Die Teilnichtigkeit von Rechtsgeschäften im klassischen römischen Recht,* (Berlin, 2006) 13.

5 A. Bessenyő, *Római magánjog [Roman Private Law],* (Budapest and Pécs, 2010[4]) 118.

6 For the etymology and different meanings of the word *negotium* see from recent literature A. Guzmán Brito, *Acto, negocio, contrato y causa en la tradición del derecho europeo e iberoamericano,* (Navarra, 2005) 26 et seq.

7 U. Álvarez Suárez, *El negocio jurídico en derecho romano,* (Madrid, 1954) 3 et seq. – For the problems of legal transaction in Roman law, see more from Spanish literature A. Torrent, *El negocio jurídico en derecho romano,* (Oviedo, 1984).

8 H. Honsell, Th. Mayer-Maly and W. Selb, *Römisches Recht,* (Berlin, Heidelberg, New York, London, Paris and Tokyo, 1987[4]) 86 DOI: https://doi.org/10.1007/978-3-642-61576-4_4 notes, that Roman jurisprudence was averse to the concept of legal transaction, as well as from any other abstraction. Cf. e.g. M. Kaser, R. Knütel and S. Lohsse, *Römisches Privatrecht,* (München, 2021[22]) 93.

In classical Roman law, the essence of legal transaction was expressed through the terms *agere, gerere,* and *contrahere*. This trichotomic classification appears in the next fragment of Ulpian, in which he cites the famous definition of the late classical jurist Labeo, much-discussed in Roman law literature:

> *Labeo libro primo praetoris urbani definit, quod quaedam „agantur", quaedam „gerantur", quaedam „contrahantur": et actum quidem generale verbum esse, sive verbis sive re quid agatur, ut in stipulatione vel numeratione: contractum autem ultro citroque obligationem, quod Graeci* synallagma *vocant, veluti emptionem venditionem, locationem conductionem, societatem: gestum rem significare sine verbis factam.* (Ulp. D. 50, 16, 19)

According to the classification used by Labeo in this text (the classical origin of which is debated), the terms *agere, gerere,* and *contrahere* indicate different kinds of transactions and obligations resulting from them.[9] Labeo refers to transactions in connection with *"agere",* which are made by oral formalities *(verbis)* or by the delivery of a thing *(re);* in the text Labeo mentions *stipulatio* (as a verbal contract) and *numeratio* (as a real contract); both constitute an unilateral obligation. Conversely, *"contrahere"* expresses contracts creating equally bilateral obligations (the phrase *"ultro citroque obligatio"* refers to the element of reciprocity), and, in this context, Labeo mentions *emptio venditio, locatio conductio,* and societas, namely all the consensual contracts except *mandatum,* which constitutes an unequally bilateral obligation. According to the text, the phrase *"gerere"* indicates a transaction that is made *sine verbis* by the parties. What Labeo meant by this third type of transaction, i.e. obligations, cannot be reconstructed, as the meaning of *gerere* cannot be revealed precisely in this aspect.[10]

[9] R. Zimmermann, *The law of obligations. Roman foundations of the civilian tradition,* (Oxford, 1996[3]) 562[111] is rather skeptical about the definition of *contractus* by Labeo. – Several authors share the opinion that certain parts of the text are results of post-classical interpolation. F. Gallo, *'Synallagma' e 'conventio' nel contratto, I,* (Torino, 1992) 83 states that recent literature generally accepts the genuineness of the text. For the definition of Labeo from the recent literature, see more e.g. A. Burdese, Sul concetto di contratto e i contratti innominati in Labeone, in A. Burdese (cur.), *Le dottrine del contratto nella giurisprudenza romana,* (Padova, 2006) 111 et seq.; E. Stolfi, *Introduzione allo studio dei diritti greci,* (Torino, 2006) 160 et seq.; C. Pelloso, Le origini aristoteliche del συνἀλλαγμα di Aristone, in L. Garofalo (cur.), *La compravendita e l'interdipendenza delle obbligazioni nel diritto romano, 1,* (Padova, 2007) 85 et seq.; L. Winkel, Alcune osservazioni sulla classificazione delle obbligazioni e sui contratti nominati nel diritto romano, (2000–2001 [pubbl. 2009]) (103–104) *BIDR,* 61 et seq.; R. Fiori, 'Contrahere' in Labeone, in *Carmina iuris. Mélanges en l'honneur de Michel Humbert,* (Paris, 2012) 311 et seq.; K. Tanev, Il contratto labeoniano nel suo ambiente linguistico, giuridico e commerciale, in *Scritti per Alessandro Corbino, 7,* (Tricase, 2016) 129 et seq., esp. 132 et seq. On the whole problem, see e.g. P. De Francisci, *Συνάλλαγμα. Storia e dottrina dei cd. contratti innominati, II,* (Pavia, 1916) 331 et seq., and R. Santoro, *Il contratto nel pensiero di Labeone,* (Palermo, 1983) esp. 6 et seq.

[10] As was pointed out by M. Sargenti, *La sistematica pregaiana delle obbligazioni e la nascita dell'idea di contratto, Prospettive sistematiche nel diritto romano,* (Torino, 1976) 485 et seq. Cited coincidentally by G. Hamza, *Jogösszehasonlítás és az antik jogrendszerek [Comparative Law and Antiquity],* (Budapest, 1998) 197.

II. Conceptual antecedents of legal transaction before the Pandectists

Although the generally and basically used technical term of legal transaction was created by renowned Pandectists, who also elaborated the doctrine of legal transactions,[11] we would like to emphasize that the concept of legal transaction can be traced back to much earlier roots.

However, the literature does not share a unitary position on the question of which jurist first presented the concept of legal transaction.

For instance, *Stein*[12] points out that the term *negotium* was first developed by *Johannes Althusius (Althaus).* In his view, the category of *negotium* includes every transaction that affects the social life of man, either by adding something useful or necessary or by providing an obstacle to it.[13]

According to *Schermaier*[14] and *Hamza*[15] the term *actus iuridicus* was first developed by *Daniel Nettelbladt* (a student of *Christian Wolff*). According to his plausible but rather wide definition, the legal transactions (*actus iuridici* or *negotia iuridica* [*rechtliche Geschäfte*]) incorporate licit acts of men, which concern rights and obligations, regardless as to they produce rights and obligations or not:

> ...facta hominum licita, quae iura et obligationes concernunt, sive iura et obligationes... producant, sive non...[16]

In this definition, the admissibility of an act appears as a conceptual criterion of legal transaction.

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[11] For the Pandectists' doctrine of legal transaction, see from Hungarian literature comprehensively E. Pólay, *A pandektisztika és hatása a magyar magánjog tudományára [The Pandectistic and its influence on the science of Hungarian private law],* (Szeged, 1976) 60 et seq. On the Pandectists' theory of the declaration of will, and for its influence, see e.g. F. Ranieri, *Europäisches Obligationenrecht,* (Wien, 2009[3]) 128 et seq.

[12] P. Stein, *Roman Law in European History,* (Cambridge, 1999) 82. DOI: https://doi.org/10.1017/CBO9780511814723

[13] J. Althusius, *Dicaeologicae libri tres, totum et universum ius, quo utimur, methodice complectentes,* (Francofurti, 1649) esp. 2. (This work was originally published in 1617.)

[14] M. J. Schermaier, in M. Schmoeckel, J. Rückert and R. Zimmermann (hrsg.): *Historisch-kritischer Kommentar zum BGB, I,* (Tübingen, 2003) 356; Idem: *Die Bestimmung des wesentlichen Irrtums von den Glossatoren bis zum BGB,* (Wien, Köln and Weimar, 2000) 287.

[15] G. Hamza, *The subsequent fate of Roman law in a comparative legal approach,* (Budapest, 2007) 38[175]; Idem: *The subsequent fate and continuity of Roman (civil) law from a historical-comparative perspective,* (Budapest, 2016) 67[175].

[16] D. Nettelbladt, *Systema elementare iurisprudentiae positivae Germanorum communis,* (Halae, 1781) 108. (This work was originally published in 1749 [*Systema elementare universae iurisprudentiae positivae communis Imperii Romano Germanici usui fori accommodatum*].)

Krampe refers to the fact[17] that the term legal transaction was already used by *Christian Ferdinand Harpprecht,* professor at the University of Tübingen, in his dissertation on the topic of conversion. Harpprecht approaches the essence of legal transactions as follows:

> Multiplicia sunt negotia, quibus tam *in iudicio* quam *extra illud* homines inter se uti solent. Sunt illa *negotia* certi quidam *modi*, quibus propositum quendam finem possumus adipisci.[18]

The diverse transactions, used in a judicial process and outside it, are types of behavior *(modi)* to achieve a proposed purpose *(finis)*. In this definition, which can be considered rather as a periphrase, the purpose of the party (who makes a declaration) appears. This will be marked as the legal effect *(rechtliche Wirkung)* in the Pandectists' doctrine of legal transactions.

III. The Pandectists' definition of legal transaction and its influence up to the present day

The modern term legal transaction or juridical act is defined within the confines of the concept of legal fact, elaborated by *Savigny* (*juristische Thatsache,* which – according to *Savigny*[19] – incorporates every event that constitutes or abolishes a right or a legal relationship [*Rechtsverhältnis*][20]).

Some civil codes *expressis verbis* defined and even define at the present time the legal transaction by means of the legal relationship (which is naturally inseparable from the term of legal fact). For instance, according to Section 88 of the Saxon Civil Code of 1863, if the intention of an act is to constitute, abolish or modify a legal relationship in accordance with the law then the act is a legal transaction.[21] The text of art. 140 of the Peruvian *Código civil* can be considered as a more recent example, in which the legal

[17] Ch. Krampe, *Die Konversion des Rechtsgeschäfts,* (Frankfurt am Main, 1980) 30. DOI: https://doi.org/10.3196/9783465013983

[18] C. F. Harpprecht, *De eo, quod iustum est, circa conversionem actuum negotiorumque iuridicorum iamiam peractorum,* (Diss. Tübingen, 1747) 3.

[19] F. C. von Savigny, *System des heutigen römischen Rechts, III,* (Berlin, 1840) 3. DOI: https://doi.org/10.1515/9783111443355

[20] It is well-known that the technical term of legal relation was also elaborated by Savigny in his work *System des heutigen römischen Rechts,* based on the Kantian theory of free will, and defining its essence as the "independent reign of the individual will". For the theory of *Savigny,* and generally, for the origin of the term of legal relation *(Rechtsverhältnis)* from the recent literature, see A. Guzmán Brito, Los orígenes del concepto de "Relación Jurídica" ("Rechtliches Verhältnis" – "Rechtsverhältnis"), (2006) 28 *Revista de estudios histórico-jurídicos,* 187–226.

[21] "Geht bei einer Handlung der Wille darauf, in Übereinstimmung mit den Gesetzen ein Rechtsverhältnis zu begründen, aufzuheben oder zu ändern, so ist die Handlung ein Rechtsgeschäft."

transaction is defined as a manifestation of an intention that constitutes, regulates, modifies, or terminates legal relationships.[22]

Compared to this, the classic definition by *Bernhard Windscheid* – although it is rather a literary difference – highlights the orientation of legal transaction to a legal effect instead of its legal relationship-constituting nature. According to *Windscheid*'s much-quoted and widely accepted definition, a legal transaction is a private declaration of will (i.e. a declaration of will made by a private individual), which aims to produce a legal effect, as stated in his *Lehrbuch des Pandektenrechts:*

> Rechtsgeschäft ist eine auf die Hervorbringung einer rechtlichen Wirkung[23] gerichtete Privatwillenserklärung.

Citing an example of positive law: art. 944 of the old Argentinian *Código civil* of 1869 – even though the Code did not have a general part – regulated legal transactions in particular, and also defined the legal transaction *(acto jurídico),* in the context of legal relationships *(relaciones jurídicas)*. According to this article, legal transactions are licit voluntary acts that directly aim to establish legal relationships between persons, and create, modify, transfer, preserve or extinguish rights:

> Son actos jurídicos los actos voluntarios lícitos, que tengan por fin inmediato, establecer entre las personas relaciones jurídicas, crear, modificar, transferir, conservar o aniquilar derechos.

Art. 259 of the new Argentinian *Código Civil y Comercial de la Nación* of 2014 (which already has a general part) defines legal transactions similarly, but slightly more concisely, compared to the earlier code:

> El acto jurídico es el acto voluntario lícito que tiene por fin inmediato la adquisición, modificación o extinción de relaciones o situaciones jurídicas.

That is, in the new Argentinian code, legal transaction is a licit voluntary act that directly aims to acquire, modify or terminate legal relationships or "legal situations".

Art. 81 of the former Brazilian *Código civil* of 1916 (which was replaced by the new Brazilian civil code of 2003) also defined juridical act *(ato jurídico),* highlighting its purpose being to produce legal effects: every licit act that aims to acquire, protect, transfer, modify or extinguish rights, is called a juridical act:

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[22] "El acto jurídico es la manifestación de voluntad destinada a crear, regular, modificar o extinguir relaciones jurídicas." – These are quite rare examples, as even civil codes that expressly use the term "legal transaction", e.g. the recent German or Portuguese civil code, do not contain its definition.

[23] The effect, which is aimed to be produced by a legal transaction, obviously can only be a legal effect. H. Dernburg, *Pandekten,* (Berlin, 1900[6]) I, 212[11] points out *expressis verbis* that a legal transaction exists only, if the parties want its binding force (in the sense of law).

> Todo o ato lícito, que tenha por fim imediato adquirir, resguardar, transferir, modificar ou extinguir direitos, se denomina ato jurídico.

The term legal transaction cannot be considered an anachronistic one; moreover, we can observe its true renaissance.

In 2005, the draft called *Avant-projet de réforme du droit des obligations et du droit de la prescription* (henceforth: *Avant-projet Catala*),[24] aimed to amend certain parts of the French *Code civil*, and defined the legal transactions in accordance with the Pandectists, specifying them as voluntary acts aiming to produce legal effects (art. 1101-1):

> Les actes juridiques sont des actes de volonté destinés à produire des effets de droit.[25]

The current text of art. 1100-1 – in accordance with the comprehensive reform[26] of 2016 of the French civil code – defines legal transaction similarly, but using the term *"manifestations de volonté"* instead of *"actes de volonté":*

> Les actes juridiques sont des manifestations de volonté destinées à produire des effets de droit.

Furthermore, the *Draft Common Frame of Reference* includes the definition of both *contract* and *juridical act*, directly one after the other and in the context of each other.

The DCFR defines the term contract first:

> A contract is an agreement which is intended to give rise to a binding legal relationship or to have some other legal effect. It is a bilateral or multilateral juridical act. (II.–1:101 [1])

Hence, the DCFR defines the term contract within the term of juridical act. The reference to legal relationship and legal effect, as well as the statement that a contract can be a bilateral or multilateral juridical act, clearly demonstrates the influence of the Pandectists' terminology.

The DCFR defines the term juridical act as follows:

> A juridical act is any statement or agreement, whether express or implied from conduct, which is intended to have legal effect as such. It may be unilateral, bilateral or multilateral. (II.–1:101 [2])

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[24] On this draft of great importance, see J. Cartwright, S. Vogenauer and S. Whittaker (eds): *Reforming the French law of obligations: comparative reflections on the Avant-projet de réforme du droit des obligations et du droit de la prescription ('the Avant-projet Catala'),* (Oxford, 2009).

[25] The *Avant-projet Catala* shows the significant influence of the German jurisprudence, as it defines legal fact *(fait juridique)* as follows: "legal facts are acts or events to which the law attaches legal effects" (1101-2: "Les faits juridiques sont des agissements ou des événements auxquels la loi attache des effets de droit."; art. 1101-2 of the *Code civil* [which entered into force on the 1st of October 2016] contains literally the same definition). For these definitions, see B. Fauvarque-Cosson and D. Mazeaud (eds): *European Contract Law. Materials for a Common Frame of Reference: terminology, guiding principles, model rules,* (München, 2008) 66 and 73.

[26] See *Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations*.

The reference to *legal effect* in this definition also shows the persistence of the Pandectists' tradition, as well as the statement that a juridical act can be unilateral, bilateral or multilateral, notwithstanding that words such as *"express"* and especially *"implied"* – in terms of convergence – somewhat demonstrate the influence of common law/Anglo-Saxon legal terminology.

IV. Legal transaction in the science of modern private law and some modern legal systems

The term legal transaction is significant to positive law in certain legal systems only. Principally, but not exclusively it is relevant to civil codes with a general part, because "legal transaction" as a legal institution belongs structurally to the general part of private law. In this manner, the German civil code of 1900, the Portuguese civil code of 1967, and the Brazilian civil code of 2003 contain a voluminous provision concerning legal transactions. The phrase "juridical act" ("legal transaction") also appears in the current text of the French *Code civil (acte juridique),*[27] as well as in the Austrian ABGB *(Rechtsgeschäft)*[28] – despite the fact that both civil codes are based on the institutional system.

Although the German BGB[29] does not define the term legal transaction *(Rechtsgeschäft),* it contains particular regulations concerning legal transactions (Section 104 *et seq*.), for instance on the invalidity or voidness of voluntary acts, on partial invalidity, and several other issues belonging to the general part of private law. The detailed review of this provision requires numerous monographs, so we have to move on. It displays a high level of abstraction and, in spite of all the amendments meanwhile issued, it demonstrates the indelible influence of the Pandectists concerning the general doctrine of legal transactions until this very day. It also had a determinant influence on all civil codes that are based on the "pandectistic" system (i.e. on civil codes which contain a general part; for instance the current Portuguese *Código civil* [*negócio jurídico,* art. 217 *et seq*.], or the new Brazilian *Código civil* [*negócio jurídico*, art. 104 *et seq*.]).

[27] See e.g. art. 1108-1 of the *Code civil* (before the reform of 2016, as this text of the cited article was replaced on 1 October 2016), and especially articles 1100 et seq. (after the reform).

[28] The 17th *Hauptstück* of the 2nd book (law of property) of the Austrian civil code has the following title: "Concerning contracts and legal transactions in general" ("Von Verträgen und Rechtsgeschäften überhaupt").

[29] From the rich literature on the doctrine of legal transaction of the German BGB see e.g. the cited works of Larenz, Flume and Schermaier. – In connection with the German BGB's provisions on legal transactions, we refer to the voluminous work of Raymond Saleilles from the older French literature: *De la déclaration de volonté. Contribution à l'étude de l'acte juridique dans le Code civil allemand,* (Paris, 1901).

Concerning the use of the term *"acte juridique"* in the French *Code civil* (which does not have a general part) and in French jurisprudence: the original text of the French civil code of 1804 naturally did not include[30] this term (nor other civil codes, inspired by the *Code civil,* for example the Italian *Codice civile* of 1865 or the Spanish *Código civil* of 1889). Since French jurisprudence was determined until the end of the 19th century by the positivist *école de l'exégèse,*[31] which literally interpreted the text of law, and – in connection with this – that French private law textbooks in the 19th century did not contain a general part, it should not be surprising that the category of legal transaction (so precisely defined in German jurisprudence) was not used by French jurists at this time. The impact of the doctrine of legal transaction, well defined in German jurisprudence, is demonstrable only in *Planiol*'s *Traité élémentaire de droit civil,* published in 1899, as the famous French civilist particularly discusses the doctrine of legal transactions *(théorie générale des actes juridiques),*[32] translating the German word *"Rechtsgeschäft"* into French as *"acte juridique"*. Following this work, more and more 20th century French textbooks included an overview concerning *actes juridiques,*[33] even though the term juridical act did not have such importance in French law (before 1st of October 2016) like e.g. in German law.[34] French academic literature commonly used *acte juridique* with the same meaning as *Rechtsgeschäft,* in accordance with, and because of the impact of, the German jurisprudence, defining it as a declaration of will aimed to produce a legal effect, distinguishing unilateral (*actes unilatéraux;* e.g. last will and testament) and bilateral (*actes bilatéraux;* contracts) acts within this term.[35] However, in French literature *"acte juridique"* was also used in a wider sense, generally as "a juridical act", and not always in the technical (German) sense of *Rechtsgeschäft.* The reform of the law of obligations of 2016 had a crucial importance from this aspect as well, because the current text of the *Code civil,* which entered into force on 1 October 2016, also contains the definition of the juridical act (art. 1100-1), furthermore

[30] As French legal terminology did not know the term *acte juridique* at this time. The term legal transaction, inspired by natural law jurisprudence and constructed by the Pandectists, was particularly developed only later in German jurisprudence as well. The term *acte juridique* first appeared in 2004 in the text of the French civil code; since 1 October 2016, as we observed, it obtained great importance, as well as an authentic, "statutory" definition.

[31] Cf. e.g. H. Schlosser, *Grundzüge der Neueren Privatrechtsgeschichte,* (Heidelberg, 2005[10]) 132.

[32] Cf. R. Sacco, *Negozio giuridico (circolazione del modello),* Digesto 4a ed. Discipline privatistiche, sezione civile, (Torino, 1995).

[33] E.g. A. Weill, *Droit civil. Introduction générale,* (Paris, 1970[2]).

[34] Due to this, recent French textbooks until now addressed the problem of *acte juridique* very briefly (see e.g. F. Terré, Ph. Simler and Y. Lequette, *Droit civil. Les obligations,* (Paris, 1996[6]); Ph. Malaurie and P. Morvan, *Droit civil. Introduction générale,* (Paris, 2009[3]); Ph. Malaurie, L. Aynès and Ph. Stoffel-Munck, *Droit civil. Les obligations,* (Paris, 2011[5]). It is meaningful that the term *acte juridique,* even in the also voluminous index of subjects of the voluminous, standard French private legal history textbook (J. Lévy and A. Castaldo, *Histoire du droit civil,* (Paris, 2002), does not appear as an independent entry.

[35] So, for example, Terré, Simler and Lequette, *Les obligations,* 5 et seq.

mentioning juridical acts as one of the sources of obligations (art. 1100).[36] As such, the juridical act appears in the new text of the French *Code civil* as a system-forming element.[37] This dogmatic and terminological solution originating from the German Pandectists can be considered as a certain split from old French legal traditions, as well as a clear influence of German jurisprudence and legal thinking.

In Italian jurisprudence and private law, the impact of the German jurisprudence, concerning the doctrine of legal transaction, can only be detected from the end of the 19th century – until this time, the impact of the French jurisprudence was exclusive.[38] Several fundamental Italian works, published in the 20th century, show the powerful influence of the German private law dogmatics.[39] In Italian legal terminology, *negozio giuridico* (not as commonly as *atto negoziale*)[40] is equivalent to the Pandectists' definition of legal transaction, while the equivalent of the French *acte juridique, atto*

[36] "Les obligations naissent d'actes juridiques, de faits juridiques ou de l'autorité seule de la loi." According to the new provision of the French civil code, obligations arise from legal transactions, legal facts or by the authority of the law. This definition refers to a completely different approach, largely of Pandectistic origin, than the earlier one, in which Roman legal traditions could be identified. {On the basis of the Institutes of Justinian [3, 13, 2], the French *Code civil* contained the quaternary division of the sources of obligations in its art. 1370 [which was replaced on 1 October 2016], which said that obligations without an agreement could arise either from quasi-contracts [*quasi-contrats*], or delicts [*délits*], or quasi-delicts [*quasi-délits*]. As a fifth source of obligations, the cited art. mentioned also the law [*loi*]; from Hungarian literature cf. A. Földi, in A. Földi [ed.]: *Összehasonlító jogtörténet [Comparative Legal History],* (Budapest, 2022[5]) 359; in connection with the problem of quasi-delicts, see A. Földi, *A másért való felelősség a római jogban, jogelméleti és összehasonlító polgári jogi kitekintéssel [Vicarious Liability in Roman Law, with a Legal Theoretical and Comparative Civil Law Outlook],* (Budapest, 2004) 221 et seq., and 317 et seq. for details.} However, this new provision also differs from the Pandectistic terminology, as it mentions legal transactions among the sources of obligations, which are dogmatically also legal facts, *beside* legal facts. The *Code civil* distinguishes within *actes juridiques* (which are declarations of will aiming to produce a legal effect, see the new art. 1100-1: "Les actes juridiques sont des manifestations de volonté destinées à produire des effets de droit.") between contracts and unilateral legal transactions (see the new art. 1100-1: "Ils peuvent être conventionnels ou unilatéraux."); within *faits juridiques* (these are such acts or events, to which the law attach legal effects; see the new art. 1100-2: "Les faits juridiques sont des agissements ou des événements auxquels la loi attache des effets de droit.") between delicts (extra-contractual liability: "responsabilité extracontractuelle"; see the new art. 1100-2; to the provisions of delictual liability see the new articles 1240 et seq.), and other sources of obligations ("autres sources d'obligations"; see the new art. 1100-2; for the *quasi-contrats*, belonging to this category, see the new articles 1300 et seq.).

[37] Cf. recently L. Vékás, *Szerződési jog. Általános rész [Law of contracts. General Part],* (Budapest, 2016) 25.

[38] Cf. e.g. F. Ranieri, Einige Bemerkungen zu den historischen Beziehungen zwischen deutscher Pandektistik und italienischer Zivilrechtswissenschaft: Die Lehre des Rechtsgeschäfts zwischen 19. und 20. Jahrhundert, in *Études à la mémoire du Professeur Alfred Rieg,* (Bruxelles, 2000) 703 et seq.

[39] E.g. V. Scialoja, *Negozi giuridici,* (Roma, 1933); L. Cariota Ferrara, *Il negozio giuridico nel diritto privato italiano,* (Napoli, 1948); E. Betti, *Teoria generale del negozio giuridico,* (Torino, 1960[3]).

[40] Cf. e.g. G. B. Ferri, *Negozio giuridico,* Digesto 4a ed. Discipline privatistiche, sezione civile, (Torino, 1995). For the Italian legal history and recent questions of *negozio giuridico* Fauvarque-Cosson and Mazeaud (eds): *European Contract Law,* 84 et seq. gives an excellent summary.

giuridico, is used in a wider sense, meaning licit and illicit acts of men,[41] as well as – within licit acts – legal acts that do not aim to produce legal effects: these are *atti giuridici non negoziali*.[42] Whilst the new Italian *Codice civile* of 1942 shows the influence of the German BGB, and it even received several elements of the German civil code, it still does not contain a general part, and in accordance with that, the new Italian civil code does not include a general provision on legal transactions either.[43] Nevertheless, the term *negozio* is used by Italian authors quite often, because of the powerful impact of German jurisprudence on the Italian.[44]

In the Anglo-Saxon legal terminology the technical term legal transaction is also known; relevant phrases are *juridical act, act in law, act in the law, juristic act, legal act,* or *legal transaction*.[45] Of course, this does not mean that the term legal transaction would be important in the positive law, or that it would be a system-forming term in legal systems belonging to the common law jurisdiction.

The Hungarian Civil Code of 1959 did not include a "doctrine of legal transaction" (the word "legal transaction" [*"jogügylet"*] itself appeared in this code once [under Section 16, subsection 2, point b)]). From this aspect, according to all indications, no change is to be expected, neither in the near future, nor in long term. Although, the word "legal transaction" appears more times in the text of the new Hungarian Civil Code of 2013,[46] as this code also lacks a general part, it also lacks the doctrine of legal transactions, as well as particular regulations on them.[47] As *Vékás* writes, "in the Civil Code, the legal transaction is not a system-forming term".[48]

[41] For instance Albertario, in his Roman law textbook (Albertario, *Il diritto romano,* 115), differentiates *negozio giuridico* and *atto illecito* within the category of *atto giuridico.*

[42] Cf. P. Cisiano, *Atto giuridico,* Digesto 4a ed. Discipline privatistiche, sezione civile, (Torino, 2003).

[43] Cf. e.g. Fauvarque-Cosson and Mazeaud (eds): *European Contract Law,* 85.

[44] Cf. Fauvarque-Cosson and Mazeaud (eds): *European Contract Law,* 84.

[45] Cf. Sacco, *Negozio giuridico (circolazione del modello),* and from the American comparative legal literature J. H. Merryman, *The Civil Law Tradition,* (Stanford, 1985[2]) 75 et seq.

[46] Section 2:23, subsection 2, point *b)*; Section 3:101, subsection 3; Section 5:154, subsection 2; Section 5:163, subsection 3; Section 5:174, subsection 2; Section 5:183; Section 6:329.

[47] See L. Vékás (ed.), *Szakértői Javaslat az új Polgári Törvénykönyv tervezetéhez [Expert's Report to the Draft of the New Civil Code],* (Budapest, 2008) 61, as well as the new Hungarian Civil Code of 2013. Cf. L. Vékás and P. Gárdos (eds): *Kommentár a Polgári Törvénykönyvhöz [Commentary to the Civil Code], II,* (Budapest, 2014) 1307.

[48] See. Vékás, *Szerződési jog. Általános rész [Law of contracts. General Part],* 28. On the attitude of the new Hungarian Civil Code to legal transactions see more recently, comprehensively and critically J. Benke, *Krízis és fedezetelvonás. A csalárd fedezetelvonás elleni hitelezővédelmi jog történeti alapjai és azok mai jelentősége az új magyar Polgári Törvénykönyv tükrében [Crisis and Fraudulent Conveyance. The Historical Grounds and Their Present-day Importance of Creditor Protection against Fraudulent Conveyance in Light of the New Hungarian Civil Code],* (Budapest, 2016) 23–25.

The first part (Common provisions relating to obligations) of the sixth book of the Civil Code of 2013 includes provisions concerning legal transactions, but under the title of "legal statements" (6:4.–6:10) instead of the doctrine of legal transactions.[49]

As such, in Hungarian civil law, in principal it is not the legal transaction but the legal statement that has importance in the positive law. Subsection 1 of Section 6:4 defines legal statement instead of legal transaction, using the Pandectists' definition of the legal transaction literally. "A legal statement is a statement of will intended to have legal effect" (in Hungarian: "a jognyilatkozat joghatás kiváltására irányuló akaratnyilatkozat"); that is a definition *idem per idem,* as the word "nyilatkozat" (statement) appears twice: the legal *statement* ("jog*nyilatkozat*") is a *statement* of will ("akarat*nyilatkozat*"). We would like to note that maybe it would have been more elegant to define the legal transaction itself in this form, not the legal statement; however, this would not be particularly relevant for the jurisdiction anyway, so this is more of a theoretical-dogmatical note from our part.

The Civil Code of 2013 therefore resulted in the expansion of levels of regulation of the law of obligations in the Hungarian positive civil law with a new legal technique, the incorporation of general provisions concerning legal statements into the Civil Code. In order to reduce the effects of initial jurisdictional difficulties arising from this expansion, the Civil Code includes some provisions of a textbook nature (the definition of the term of legal statement is especially such). Although this is a didactic approach, it can be considered reasonable, as the judiciary had to deduce the answers to sometimes not even contractual legal questions from the general provisions concerning contracts, because the former Civil Code lacked the general regulation of legal transactions.[50]

"Unless otherwise provided for in this Act, the provisions on legal statements shall also apply to legal statements not pertaining to obligations" (Section 6:10);[51] this provision (also) belongs to the general part of private law from a theoretical-dogmatical aspect, and not only to the law of obligations. Taking also this into consideration, these general provisions concerning legal statements could also have been provided among the introductory provisions of the Civil Code – even considering that the Civil Code does not have a general part.

[49] See e.g. A. Osztovits, in A. Osztovits (ed.), *A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok nagykommentárja [Great Commentary of the Act V of 2013 on the Civil Code and Related Legal Sources], III,* (Budapest, 2014) 38; recently Vékás, *Szerződési jog. Általános rész [Law of contracts. General Part],* 28.

[50] Cf. e.g. Vékás and Gárdos, *Kommentár a Polgári Törvénykönyvhöz [Commentary to the Civil Code],* 1307; Osztovits, *A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok nagykommentárja [Great Commentary of the Act V of 2013 on the Civil Code and Related Legal Sources],* 38.

[51] Cf. e.g. Vékás and Gárdos, *Kommentár a Polgári Törvénykönyvhöz [Commentary to the Civil Code],* 1307, and 1315 et seq.

V. Major conclusions

We cannot avoid scrutinizing, at least briefly, the question of the theoretical *raison d'être* and practical importance of legal transaction in our time. At this point, this review can be considered rather as a proposition of the problem.

As legal transaction is an artificial term, constructed with a high jurisprudential abstraction, we have to note that particular provisions in the general part, concerning legal transactions, only "overcomplicate" the system of regulation of civil law, both from a dogmatic and a terminological point of view.

According to the situation described above, in Hungarian civil law, the term legal transaction principally has theoretical and didactical importance rather than a positive legal one. We do not intend to contest that the development and definition of the term legal transaction, which involves contracts, for example, as well as testaments, can be considered a much more advantageous and successful jurisprudential abstraction than, for instance, the creation of the "superior" category of servitude through the "incorporation" of "personal servitudes" (e.g. *ususfructus*) into the concept of servitude. However, theoretical and practical relevance are two different things. It is easy to concede the jurisdictional difficulties that would arise if a general part (including detailed general provisions concerning legal transactions) were institutionalized in Hungarian civil law, especially considering that these general provisions would not have such a legal practice as in German law anyway, not to mention that modern civil codes do not possess such a precise terminology as the German BGB, which can also be described as *Professorenrecht*. A civil code with a general part would have a provision like this: most general regulations on the contract of sale could be found in the general provisions on legal transactions; this would be followed at the general part of the law of obligations by the general provisions of the law of contracts, then special provisions on the contract of sale would come at the special part of the law of obligations. This would be a model of three-level regulation, for which the Hungarian jurisdiction is not prepared – and it would not be worth the effort to institutionalize such regulation (of the contract of sale, in our example) in the same civil code either. It is not coincidental that, during the codification of the new Hungarian Civil Code, no proposal was made on the institutionalization of the general part of private law.