

SUMMARY

This doctoral thesis entitled “The Legal Nature of Financial Securities”, written by Ms. Aida Diana D. Dumitrescu, has been drawn up under the scientific coordination of Professor Ion Dogaru PhD, a reporting member of the Romanian Academy.

The thesis is structured in five chapters and each of them comprises a number of sections and subsections which were conceived as a result of a correlating analysis of an ample bibliographic material, made up of some theoretical studies of Romanian as well as foreign authors, legal usage/ practice and a complex and dynamic law-making framework.

The paper is addressed mostly to specialists, theorists and practitioners in the legal and economical fields, but the performed case studies are useful to any person who works or is simply interested in activities that involve the utilization of financial securities.

The work provides to the interested persons an ample and updated study, having a real theoretic and practical effectiveness on the subject of the legal nature of financial securities and offers arguments for the substantiation of some viewpoints in this area of expertise (law modifications, motivations for jurisprudence decisions, arguments, etc...), presenting itself out as an awareness factor related to the magnitude of the place and the role of the financial security in the contemporary age.

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4.3.1 – Particulars of the endorsement and guarantee of the promissory note

4.3.2 – Payment of the promissory note at hand

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Section I – General aspects

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5.3.1 – Rules which apply to certain types of checks

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Section IV – Transfer, warranty and pay off of the check generated bond

5.4.1 – Transfer of the check generated bond

5.4.2 – Warranty of the check generated bond

5.4.3 – Pay off of the check

CONCLUSIONS AND RECOMMENDATIONS

BIBLIOGRAPHY



Chapter 1 – Considerations related to the financial securities – has the purpose of introducing to the reader the subject matter related to financial securities, defining through its five parts, aspects concerning: the concept of “financial securities”, terminology, characteristics of the financial securities, principles of the financial securities, evolution of the ruling frame-work on the subject of financial securities.

Such introductory chapter has proved necessary through a need to establish the meaning of the financial securities concept, given our finding that both in the doctrine, the jurisprudence and the laws, the used terminology is and has been non-unitary. We assume, in unison with other representatives of the doctrine and in accordance with the provisions of the new Civil Law Code, that the correct phrasing to be used is that of “titlu de valoare” (“financial securities”).

Furthermore, we feel that it is useful to analyze the characteristics and the principle elements of the “financial securities” concept, because the analysis of a notion imposes the knowledge of its peculiarities and of the rules by which it functions. The final aspect tackled in this chapter regards the evolution of the law-making framework on the subject of the financial securities, hence completing the whole image of these instruments and substantiating the conclusion that evolution of the rule-making framework to the financial securities has proved to be a natural consequence of the socio-economic life’s evolution.

The second chapter of the paper, titled “**Shared aspects in the legal nature of financial securities**” comprises three sections, during the course of which we explain the interconnection between the civil law institutions and the field of financial securities, we continue by analyzing the classifications of the financial securities and finalize by developing the argument related to the legal nature of such instruments, underlining the shared aspects in the legal nature of the promissory notes, the merchandise related and transferable securities, tackling the matter of improper credit titles/securities and particularizing the joint legal nature of the merchandise related and transferable securities.

We maintain that the analysis of the shared aspects in the legal nature peculiar to financial securities imposes a broad approach, namely through correlation of the financial securities matter with the civil law institutions (specific legal relation, applying of the civil law deed, obligations generated by the financial securities), followed by a particular tackle (presentation of the multiple classifications to the financial securities and that of some specific financial securities, as such) all set on the backdrop of a new ideological perspective, adjusted and adjustable, which has been made necessary by the fact that the classical civil law institutions prove inadequate to explain the complex relations underlying this field.

Therefore, section I - *Introduction*, comprises two subsections, by means of which the particulars of the legal relation and the legal deed on the matter of financial securities are explained. On this occasion, the legal relation generated by the financial securities is analyzed in detail and, from the perspective of the new civil law, the establishing and transferring of unimpaired rights over financial securities, their possession and usufructuary right are discussed. The analysis related to applications of the civil law deed on the subject of financial securities revolves around the controversies and theories formulated within the doctrine concerning the unilateral or bilateral nature of the security (commercial bills) and approaches the provisions of the new Civil Law Code on the matter of the special contracts which may have financial securities as their subject matter.

Section II - The obligation/ contract generated by the financial securities – reveals and motivates from a legal and economic point of view the historical transition from the personalized to the de-personalized obligation within the field of these instruments.

We find that in the economic doctrine, the credit is regarded as a deed of trust which implies the exchange between two deliveries separate in time (goods or means of payment) in place of the promise or of the perspective of payment or reimbursement, and we agree with the opinion expressed by the literature in this area of expertise asserting that financial securities are those which objectify the credit as an economic entity, as it hence becomes free of any relation to the persons who created it.

The final Section III – *Classification of the financial securities* – lists and analyzes the multitude and variety of the financial securities and notices that each of

the markets where such securities are being commercialized presents its own diversity, created by the product of its specific transactions (banknote market, cash market or inter-banking market, merchandise market).

We found it fit to discuss the promissory notes, merchandise related and transferable securities and the improper credit bills, after presenting the financial securities' classifications. We clarified each of these concepts' meaning, we analyzed it and we emphasized the particulars of their legal nature.

We mention that, in what concerns the promissory notes, we only made general observations within this part of the paper, given the fact that such financial securities will be later on herein studied in detail. The analysis of the merchandise related securities begins by clarifying the concepts, noticing the fact that such instruments record the contracts on basis of which they were issued or to which they make reference and subsequently analyzes the particulars of the legal nature to each of the respective financial securities.

The section comprises a study on the legal nature of the following merchandise-related financial securities: the bill of lading, order of delivery, warrant receipt and deposit bond. Its final part presents the category of the transferable securities and studies the share, insisting on the specifics of its legal nature as an imperfect security.

From the very start, we underlined that not all company issued bonds are security bills (the shares certificates issued by a limited liability company upon request of the associates are not) and that shares and bonds issued by the capital companies are the only company issued bonds which can be categorized as security bills.

The density of the analysis performed in this chapter substantiates our opinion that the study of the legal nature of the financial securities requires a particular and multi-disciplinary approach, in variation with the specificity, complexity and variety of these instruments; therefore, the following three chapters of the thesis develop three case studies on the topic of the legal nature of what, in our opinion, can be called the most important financial securities: the bill of exchange, the note at hand and the check.

Chapter III - An analysis concerning the legal nature of the bill of exchange
– comprises five sections, as follows – Section I – *General aspects* – which defines

the notion of exchange bill and analyzes the Civil Law source of the exchange bill legal relation and the influence of the Civil Law regulations on the subject of the exchange bill's functions and characteristics. We can therefore observe the diversification of the exchange bill's functions and correlate it with the evolution in the approaches of the Obligation theories, in the sense of their gradual de-personalization, a matter which will be studied within the following part.

In Section II – *Fundamentals of the exchange bill obligation/ bond* – we started by presenting and analyzing the theories already formulated concerning the source of the exchange bill bond, the genesis of these theories in connection with the Civil Law allowed for the use of some concepts, the utility and effectiveness of which had already been proved by the ordinary law, and to which the novelty element consists of their adjustment to the exchange bill regulations.

The joint arguments underlying these theories were based on the fact that neither tradition nor the modern positive law can set itself as obstacle to their formulation, as there is no interdiction for the old sources of the obligation to be added a new one, namely the unilateral will. The comparative research of the obligations in the past and at present made it clear that the obligations in the past were purely personal, but gradually the role of the person within the present age obligation has decreased, at the same time with the enhancement of the role of the good, therefore the obligation turned into legal liability, from a personal liability. We state that, at this point, we need to accept the concept of the legal nature peculiar to the exchange bill, namely the legal nature of a complex deed with a double source: unilateral will of the bill's issuer and the law.

Section III – *Validity preconditions for the exchange bill* – argues for the complexity of the exchange bill's legal nature, by remarks related to the legislator's constant preoccupation to timely adjust the rule-making framework in the field of the exchange bill to the necessities of the market economy, recording the large number of bill's terms which increases the capacity of this type of securities to respond to the market requirements, as well as the inter-disciplinary feature of the field.

Section IV - *Civil Law concepts represented in the circulation of the exchange bill* – continues the insight concerning the legal nature of the exchange bill, by studying the manners of exchange bill transfer (ordinary law methods, as well as specific methods), recording the increase of the security measures in the circulation of

this commercial bill. In the last section – Section V – *Exchange bill guarantees* – we have discussed the exchange bill guarantees through an analysis of the ordinary law guarantees and one of guarantees specific to the exchange bill bond, thus supplementing the argument related to the complex legal nature of such financial securities.

Chapter IV – The dual legal nature of the promissory note – is made up of three sections, the contents of which motivates in detail the complex features of the promissory note/note at hand. Section I – *General aspects* – defines the concept of note at hand, as well as the rule-making framework pertaining to the field, and it raises questions concerning the Civil Law elements of this instrument.

Section II - *Validity preconditions for the promissory note* – analyses the law provisions which regard the formal and substantive issues related to the note at hand, insisting upon the latest normative modifications, namely by introducing some new formal preconditions for this type of financial securities. The chapter ends with Section III - *Principles applying to the endorsement, guarantee and payment of the note at hand*, which evidences practical and theoretical aspects relevant in support of arguing the legal nature peculiar to the note at hand.

Chapter 5 - *The legal nature specific to the check* – comprises four sections, as follows.. By means of its contents, Section I – *General aspects* – defines the concept of “check”, presents the evolution of legal reasoning in relation with this instrument, explains the Civil Law fundamentals of the check’s legal nature and analyses its characteristics. Section II - *Validity preconditions for the checks* – tackles matters on the understanding of which depends the argument related to the legal nature of checks, and it underlines the reasons that based the latest law modifications occurring in this instrument’s framework.

Section III - *Remarks related to the legal nature of the various types of checks* – approaches the rules applicable to some types of checks, rules peculiar to the derivative types of checks and, in its final part, analyses the legal nature of the blank check. The final section - Section IV – *Transfer, warranty and pay off of the check generated bond* – provides a thorough discussion on the practical and theoretical aspects related to the transfer and warrant of the check generated bond and to its pay

off, aspects which should supplement the argument concerning the specific legal nature of the check.

The final part of the thesis comprises our conclusions and recommendations, which synthesize the debatable normative aspects, the doctrinal controversies and some issues of jurisprudence and formulate proposals related to new approaches, provisions and solutions of the potential or already noticed problems in the field. Therefore, the conclusions of the thesis comprise the following aspects:

- Analysis of the law-making framework related to the financial securities proves the complexity of such instruments' legal nature, imposing an approach in relation with the ordinary law provisions as well as with the specific legal framework
- Individual tackling of the financial securities' legal nature must be conceived in a structured manner, keeping in mind the classifications of the financial securities
- Evolution of the view to the legal nature of the transferable securities (bill of exchange, note at hand and check) has been subject to controversy and theories of the doctrine, starting from theories related to the source of exchange bill obligation (unilateral or bilateral legal deed) but, at present, a complex nature is acknowledged concerning these instruments, together with the fact that the sources of their related obligation are the unilateral legal determination as well as the law.
- The legal nature peculiar to merchandise related securities derives from the fact that such instruments record the contracts based on which they were issued or which they refer to (the source of the obligation is therefore the bilateral legal deed) but also from the peculiarities of the various merchandise related securities.
- The share has a legal nature determined by its being a type of imperfect financial securities, which does not grant for the future the certainty of a retained right.
- The thesis thus offers pertinent and useful solutions in order to theoretically motivate some practice situation, since it analyzes the evolution of the related

jurisprudence, underlines the positive aspects and the problems it is confronted with, therefore offering arguments and answers.

- Consequent to the performed study and its conclusions, the recommendations we find useful can be listed concisely as follows:
- An increase in the specialization degree of the people who are active in fields related to utilization of the financial securities through attending training courses or through personal instruction.
- Enhanced clarity of normative documents pertaining to the field of financial securities, meaning to prevent and limit erroneous interpretations of the law texts.
- Prevalent use of the modern methods to circulate the financial securities, to the detriment of the traditional methods.
- Elimination of some formal preconditions, the existence of which is no longer justified from the perspective of the latest law modifications, and preservation of the formal preconditions which improve circulation of the financial securities under conditions of optimum speed and security.
- Inter-disciplinary approach of the financial securities

The scientific results of the thesis entitled “The Legal Nature of Financial Securities” materialize in achieving a study of theoretical, regulatory and jurisprudence related modernity, which analyzes financial securities from the perspective of the Civil Law institutions and, last but not least, draws attention to the issue of technological development in the transmittal of information and to the multi-disciplinarity of this field of research.

The relevance of such results must be viewed both in relation with the previous studies, as well as in relation with the facts of contemporary socio-economic life, noticing especially the fact that the research paper underlines the aspects of legislative and technological novelty in the field, underlines the quality of defray instruments peculiar to the financial securities through which, actually, the effectiveness goal of the commercial areas of activity is best achieved, and it enhances the aspect that, through acknowledgement of the role and place of the financial

securities, situations of slower defrayment can be prevented, situations which can generate blockage of funds, thus affecting normal circulation of money and merchandise.

Finally, we mention that the geography of the area of expertise comprising doctrine specific to the financial securities has been enriched through contribution of this thesis that gathers itself, through its material solidly argued and updated, into a whole new hallmark.