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MODIFICATIONS OF LEGAL TRANSACTIONS

Abstract

The paper examines the various types of modifications of legal transactions such as conditions, terms and special stipulations. Conditions as future and uncertain circumstances have various effects on the legal transaction depending on the type of condition (suspensive (precedent) or resolutive (consequent), positive or negative, causal, potestative or combined). The effect of the conditions also differ in different points in time such as the time before the fulfillment of the condition, the time after the fulfillment of the condition and the time when it becomes certain that the condition won't be fulfilled. All such effects are presented and analyzed in the paper. Terms, unlike conditions, are certain and determined periods of time that suspend or terminate the legal transaction. The paper analyzes the legal effect of terms over legal transactions and to what extent the provisions of the Law of Obligations regulating conditions are applicable to terms. The question of computation of terms is also being analyzed as one of the important aspects of their fulfillment. Special stipulations as duties directed to one of the parties in a legal transaction are analyzed throughout the scope of the two general laws – the Law on Obligations and the Inheritance Law.

Key words: *legal transactions, contracts, civil law, conditions, terms, special stipulations, legacy.*

I. INTRODUCTION

Every legal transaction is a form of expression of the free initiative of parties to enter into civil law relations. It reflects the freedom of parties to determine what type of legal transaction they will conclude and what would be the content of such transaction. Although the laws to some extent predetermine the content of legal transactions, they also grant freedom to the contracting parties to modify that content in order to adapt it to their interests and needs. Viewing from the standpoint of the structural elements of legal transactions, the modifications are considered to be accidental elements. This means that unlike essential and natural elements which are mandatory in the structure of a legal transaction, accidental elements need to be explicitly agreed upon in order to become a part of the content of the legal transaction. The permitted modifications of legal transactions are conditions, terms and special stipulations.

II. CONDITIONS

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Conditions are future and unpredictable circumstances that effect legal transactions¹. For a condition to be considered as valid element of a legal transaction it needs to be: a future event, unpredictable, permitted, possible, clear and non-contradictory.

The Law on Obligations² recognizes as valid only the conditions that are uncertain in the moment of the conclusion of the legal transaction³. However, the law doesn't explicitly prescribe that a condition must be a future event. Regardless of that, one must consider that the "uncertainty" implies that a condition must be a future event since its occurrence is not set in the present (in the moment of conclusion of the legal transaction), but in some time in the future (after the conclusion of the legal transaction), in the contrary, it can't be considered as uncertain. Opinions of scholars differ on the question whether conditions should be considered as valid only if they represent a future event. Professor A. Grupce considered that a valid condition of a legal transaction mustn't be an event or an action that have already occurred, or if it is already certain that they will never occur in the moment of the conclusion of the legal transaction. Unlike professor Grupce, other scholars hold the opinion that a valid condition in a legal transaction is usually a future event, but it can also be valid if it has occurred in the moment of the conclusion of the legal transaction, if the parties are not aware that it has occurred⁴. They make the argument that the uncertainty of a condition in a legal transaction may be subjective as well as objective. In that regard, a condition must be treated as future event, if it is known as such to the parties who enter into the agreement under the set condition. Although we can't accept the opinion of some scholars that the uncertainty of the condition may be judged subjectively, from the view point of the parties concluding the legal transaction, we do consider that a set condition which has already occurred is valid if the parties were not aware of its occurrence. We consider that such position with respect to the validity of a condition that has already occurred is justified under the bona fide principle, meaning that when the parties concluding the legal transaction act in good faith and are not aware that the event they set as a condition has already occurred, than they shouldn't suffer negative consequences because of it⁵.

Valid condition in a legal transaction must be an uncertain event, meaning that it must be uncertain whether the event will occur or not. Therefore the death of a certain person or the eminent destruction of material things can't be set as conditions in a legal transaction because the occurrence of such events is certain to happen, although it is not know when exactly that will happen. Rightfully the scholars claim that in cases when the occurrence of a future event is certain, than such modification can only be considered as a term, and not a condition⁶.

The conditions set in a legal transaction must be permitted. Such are those conditions that are not contrary to the Constitution, laws and good customs (art. 67, par. 1, Law on Obligations). For example, a forbidden condition is the condition that a person should give a false statement in order to receive certain rights of benefits. Forbidden conditions lead to different consequences depending on whether the legal transaction is inter vivos or mortis causa. The legal transaction

¹ See: Д. Попов, *Граѓанско право (општи део), Пето измењено и допуњено издање*, Нови Сад, 2007, р. 209; Р. Ковачевић - Куштримовић, *Граѓанско право*, Ниш, 1996, р. 168; О. Stanković, V. Vodinelić, *Uvod u građansko pravo*, Beograd 2007, р.184; А. Gams, L. Ђуровић, *Uvod u građansko pravo*, Beograd 1990, р.184.

² Official Gazette of the Republic of Macedonia, number 18/01.

³ "The contract is concluded under condition if its effect or termination is dependent of uncertain event", art. 66, Law of Obligations.

⁴ See: Р. Ковачевић - Куштримовић, *op. cit.*, р. 168; Д. Попов, *op. cit.*, р. 210.

⁵ The French Civil Code considers events that have already occurred as valid conditions if parties were not aware of the occurrence in the moment of the conclusion of the legal transaction (art. 1181).

⁶ See: А. Групче, *Имотно (граѓанско) право*, Општ дел, Култура, Скопје, 1983, р. 243; Р. Ковачевић - Куштримовић, *op. cit.*, р. 168-169.

inter vivos containing forbidden conditions is null, regardless of the fact whether the conditions had been set as suspensive (precedent) or resolutive (subsequent) (art. 67, par. 1). Forbidden conditions in legal transactions mortis causa are considered as nonexistent and have no effect on the legal transaction (art. 100, par. 3, Law of Inheritance).

Conditions set in a legal transaction must also be possible. Impossible conditions set in legal transaction inter vivos lead to nullity of such transaction if the condition is suspensive (subsequent) and if it is resolutive (subsequent), then it is considered not to exist so the legal transaction can take effect free from such conditions (art. 67, par. 4, Law on Obligations). In legal transaction mortis causa impossible conditions are also considered as nonexistent (art. 100, par. 3, Law of Inheritance).

The conditions in the legal transaction must be clear and non-contradictory. When conditions are set in a legal transaction it must be clear what they include. Also, they mustn't be contradictory to other conditions or provisions in the legal transactions. The Law of Obligations doesn't determine consequences with respect to unclear and contradictory conditions. The law of Inheritance, on the other hand, prescribes that contradictory conditions in a will are considered as nonexistent (art. 100, par. 3).

It is important to note that conditions as modifications of legal transactions are not to be confused with legal conditions prescribed by law that affect the validity of the legal transaction. The legal conditions are not determined by the parties in the legal transaction, they are determined by law. Also legal conditions are not future and uncertain events, they are circumstances that must be fulfilled in the moment of conclusion of the legal transaction in order for it to be valid.

Conditions that represent modifications of legal transactions are classified dependent on their a) legal effect, b) content and c) the manner in which they occur.

a) Dependent on the effect of the condition on the legal transaction it may be suspensive (precedent) or resolutive (subsequent).

Suspensive conditions (conditions precedent) are those that suspend the effect of the legal transaction until they are fulfilled. For example, the owner agrees to lease the apartment if he or she receives work permit in a foreign country. Legal transaction concluded under suspensive condition is fully valid, however until the condition hasn't occurred, the legal transaction can't be fulfilled. This means that the creditor has no right to demand fulfillment of the obligation by the debtor, nor the debtor is obliged to do so. Legal scholars call this "a time of expectation", when the creditor has only the expectation that in future he or she will be able to receive the rights deriving from the legal transaction but only if the set condition does indeed occur⁷. It is clear that the parties can't demand fulfillment of the obligations deriving from the legal transaction until the suspensive condition occurs (art. 66, par. 3, Law of Obligations). However, that doesn't mean that the rights and duties deriving from the legal transaction enjoy no protection by law. In that sense the debtor is forbidden to undertake any action that may impede or prevent the fulfillment of the legal transaction in the future. For example, if a sales contract is concluded under suspensive condition, the seller is forbidden to damage or otherwise diminish the value of the sale. The Law of Obligations also permits for the creditor to demand guarantees for his or her rights deriving from legal transactions concluded under suspensive conditions.

Resolutive condition (conditions subsequent) set in a legal transaction leads to its termination (art. 66, par. 5, Law on Obligations). Right up to the moment when the resolutive condition occurs, the parties may realize the rights and obligations deriving from the legal transaction. However, when the resolutive condition occurs, the legal transaction is terminated,

⁷ See: Д. Попов, *op cit.*, p. 212; Р. Ковачевић - Куштримовић, *op. cit.*, p. 170.

and the rights and duties are terminated as well. One example for resolutive condition is the lease contract concluded until such time that the leaseholder finds another appropriate apartment. If the condition comes to occurs, that the lease contract will be terminated.

b) Dependent of its content, the condition may be determined as positive or negative.

The positive condition is a future and uncertain event that needs to occur so it could be considered as fulfilled. For example, a farmer promises to deliver five tons of apples, if the orchard produces such quantities in a year.

Negative condition is a future and uncertain event that mustn't occur so that it is considered as fulfilled. For example, when one person promises to borrow his or her car to another person, but only if the car belonging to that person is not serviced in time.

c) Dependent on the manner that the condition is meant to occur the conditions may be causal, potestative or combined.

Causal condition is one that is dependent entirely on chance or the will of a third party. For example the insurance will be paid if the ensured event occurs.

Potestative condition is dependent on the will of the parties. In the past the legal theory hasn't recognized the existence of potestative conditions, arguing that they are not future and uncertain events because they depend of the will of the contract parties⁸. The contemporary legal science accepts the validity of potestative conditions only if the will of the parties in the fulfillment of the conditions is tied by objective circumstances. For example when the employer promises to retain the employee if he or she does well at his or her job, or when the buyer accepts to keep what he or she bought if the merchandise meets the expectations. In both cases, the will of the parties is tied by objective circumstances, and therefore it can't be considered as entirely frivolous⁹.

Combined conditions are those that depend partly on chance and partly on the will of the parties (Example: I will give you the book, if I pass the exam).

Conditions set in a legal transaction have different effect in different moment of the duration of the transaction. The effects of the conditions vary before its fulfillment, after its fulfillment and in time when it is certain that the condition won't be fulfilled.

- In time before the fulfillment of the condition, its effect on the legal transaction depends whether the condition is suspensive or resolutive. The suspensive condition postpones the completion of the legal transaction. Until the suspensive condition isn't fulfilled the rights and duties from the transaction have uncertain future¹⁰. However, the parties still have the possibility to protect such rights so that they won't be put in question if and when the condition is fulfilled. During this time the debtor mustn't do anything that will jeopardize the rights of the creditor¹¹. If the condition is resolutive, such a condition has no effect on the legal transaction until the moment it is fulfilled. This means that the parties are able to exercise their rights and fulfill their duties from the legal transaction as if the condition doesn't exist.

- After the fulfillment of the set condition in the legal transaction there are legal consequences that, again, depend on whether the condition is suspensive or resolutive. When a suspensive condition is fulfilled, then the legal transaction gains legal effect. The rights and duties from the legal transaction may be exercised starting from that moment. There are different

⁸The Spanish Civil Code still contains provision according to which a condition isn't valid if its fulfillment depends on the will of the debtor (art. 1115). According to the Italian Civil Code, suspensive (precedent) condition isn't valid if it depends on the will of the person that commits to transfer his or her right under such condition, or if it depends on the will of the debtor in the legal transaction (art. 1355).

⁹ See: P. Kovačević - Kuštrimović, *op. cit.*, p. 169-170.

¹⁰ M. Vedriš, P. Klarić, *Gradansko pravo – opći dio, stvarno pravo, obvezno i nasljedno pravo*, Zagreb 2009, p. 122.

¹¹ O. Stanković, V. Vodinelić, *op. cit.*, p.188; R. Kovačević Kuštrimović, M. Lazić, *Uvod u građansko pravo*, Niš 2008, p. 256.

opinions among scholars on whether the suspensive condition should have retroactive effect (*ex tunc*), or its effect should be limited to the time after its fulfillment (*ex nunc*)¹². According to one opinion, the fulfillment of the suspensive condition shouldn't have retroactive effect on the legal transaction because it is contrary to the will of the parties. This is due to the fact that the parties during the conclusion of the legal transaction have intended for the condition to have suspensive effect so that the transaction gains legal effect only after the fulfillment of the set condition. Therefore, if a retroactive effect is recognized for the suspensive condition, then that will be contrary to what the parties concluding the legal transaction have intended. It can also be argued that a suspensive condition shouldn't have retroactive effect because that will put in risk the rights and interest of third parties, as well as their legal security. Another opinion is that the suspensive condition should have retroactive effect in order for the rights of the parties arriving from the legal transaction are protected. The argument is that the retroactive effect protects the creditor from all actions of the debtor undertaken during the period when it was uncertain if the set condition will be fulfilled that are contrary to his rights. Retroactive effect of the conditions is of great importance in legal transaction where the right of ownership is transferred, because it protects the right of the new owner. Professor A. Gurpce considered that the legal effect of the suspensive condition should only be limited to time in the future (*ex nunc*), unless the parties have agreed to the contrary. In case there is an agreement between the parties for the set condition to have retroactive effect, than such agreement should solely concern the parties concluding the legal transaction, but not third parties¹³.

The Macedonian Law on Obligation recognizes that the suspensive condition has retroactive effect, meaning that it has effect from the moment of conclusion of the legal transaction (art. 66, par. 2). Exceptions from the retroactive effect of the suspensive condition can be prescribed by law, when the retroactive effect is contrary to the nature of the legal transaction, and also when the parties have agreed to the contrary¹⁴.

The fulfillment of the resolutive condition leads to termination of the legal transaction, which means that all rights and duties arriving from that transaction are terminated as well. With the loss of rights restitution is due. For example, if a legal transaction for transfer of the right of ownership is terminated, than the right returns on to the previous owner. The effect of the

¹² See: A. Групче, *op. cit.*, p. 244-245.; P. Ковачевић - Куштримовић, *op. cit.*, p. 171-172.; Д. Попов, *op. cit.*, p. 213-214.

¹³ See: A. Групче, *op. cit.*, p. 244.

¹⁴ Retroactive effect of the suspensive condition is recognized in the Law of Obligations of Montenegro (art. 69), The Law of Obligations of Serbia (art. 74), and the Law of Obligations of Croatia (art. 279). In the French Civil code all conditions (suspensive and resolutive) have retroactive effect (art. 1179). The Italian Civil Code, also recognizes the retroactive effect for both suspensive and resolutive conditions. However, successive obligations arriving from legal agreement under resolutive condition can't be returned if they were made before the condition was fulfilled, unless the parties have agreed to the contrary (art. 1360). Spanish Civil Code recognizes retroactive effect of conditions in sense that when the obligation is in "dare", then it has legal effect from the moment that the event set as condition has occurred. When the obligations are bilateral, then the fruits and interests arrived before the fulfillment of the condition are considered compensated between the parties. If the obligation is unilateral the debtor has the right to collect the fruits and interests unless the nature or the circumstances under which the legal transaction has been concluded don't reflect a different intention of the parties. When the obligation is consisted of "facere" or "pati" then, according to the Spanish Civil Code, it depends on a court decision in each particular case whether the condition will have retroactive effect (art. 1120). The German Civil Code doesn't recognize retroactive effect of the suspensive condition. With respect to the resolutive condition, the German Civil Code prescribes that by its fulfillment the legal transaction is terminated and restitution is required (art. 158). According to the Swiss Code of Obligations the legal transaction concluded under suspensive condition has legal effect from the moment of the fulfillment of that condition, unless it is clear that the intent of the parties was different (art. 151). In case of resolutive condition, the Swiss Code of Obligations prescribes that legal transaction is terminated in the moment of fulfillment of such condition and generally has no retroactive effect (art. 154).

resolutive condition is always limited to the time in the future, after the moment of its fulfillment (ex nunc), which is clearly stated in the Law on Ownership (art. 66, par. 3).

- The third eventuality is when it becomes certain that the condition set in the legal transaction won't be fulfilled. If the suspensive condition isn't fulfilled, then it is considered that no legal transaction has been concluded. If the creditor has secured the rights of such a transaction the security, as well as the principal claim, are terminated. All transfers that the parties have made in hope that the condition will be fulfilled are also without effect, and if something was received under such transaction, it needs to be returned. When it becomes certain that the resolutive condition set in the legal transaction won't be fulfilled, then the legal transaction will continue to have effect as if the condition never existed.

The described legal effects of the condition over the legal transaction are under the assumption that the parties had no part in its fulfillment. If one or both of the parties acted contrary to the principle of good faith, and prevented the fulfillment of the positive condition, or deliberately caused the fulfillment of the negative condition, the Law on Obligations stipulates that the condition will be considered as unfulfilled. This stipulation is found in article 66, paragraph 4 of the Law on Obligations: *It is considered that the condition is fulfilled if its fulfillment was prevented, contrary to the bona fide principle, by the party that falls obligated under such condition, and it is considered that the condition isn't fulfilled if its fulfillment, contrary to the bona fides principle, was caused by the party that benefits from the fulfillment of such condition.*

III. Term (timeline)

Term as modification of a legal transaction is a period of time that influences the legal effect of the legal transaction. A term differs from the condition by the fact that its completion is certain, unlike the condition where its completion is uncertain¹⁵.

Term has different significance in civil law, such as: legal term, preclusive term, term for enforcement of regulations, term of validity of regulation and etc. Unlike the mentioned terms, a term as modification of legal transaction is an expression of the will of the parties. Besides that, what is typical for these types of terms is that they have effect only if the parties explicitly agree on them in the legal transaction. Such transactions are known as legal transaction under term. Legal regulation of conditions is adequately applied to term as well (art. 70, Law on Obligations), therefore all legal transaction that can't be concluded under conditions, also can't be concluded under term.

Depending on the legal effect of a term, term may be suspensive or resolutive.

Suspensive term delays the legal effect of the legal transaction. Some scholars think that a term can delay the fulfillment of the obligations of the debtor, or the effect of the entire legal transaction. According to this opinion, if a loan is given with the obligation for it to be returned in one year time, then the term delays the obligation of the debtor. If a contract is concluded where it is stated that the work should be started six month upon conclusion of the contract, in that case the term delays the entire contract. Depending on the fact whether a term delays the obligation or the entire legal transaction, some scholars recognize a term in broad and restricted sense of the word¹⁶. We can't agree with this categorization of suspensive term because it confuses the term as modification of the legal transaction (an accidental element), with the time period for fulfillment of obligations, also known as prestation term which is a natural element of the legal transaction.

¹⁵ See: Д. Попов, *op. cit.*, p. 216; А. Группче, *op. cit.*, p. 246.

¹⁶ See: Р. Ковачевић - Куштримовић, *op. cit.*, p. 176.

Resolutive term is the one that terminates the legal transaction. Such as the term of 12 months in the lease contract that signifies that the lease will last for 12 months, and after the completion of the term, the contract will be terminated. With the termination of the contract, all rights and duties will be terminated as well.

Terms are also classified depending on the degree of their determination as simple and complex terms.

Simple terms are those that are precisely determined with days of duration (Example: the term starts at 1 of September and expires 31 of December)

Complex terms are those that aren't determined with an exact day they begin to run and expire (Example: someone promises to support a person until their graduation from high school, or right of usufruct that lasts until the death of the beneficiary)¹⁷.

- Other known classifications of terms are: objective and subjective (dependent on the fact whether the term starts to run from the moment when an event has occurred or from the moment when a person becomes aware of the occurrence); strict and dispositive (depending whether they are determined by imperative or dispositive norms); legal and judicial (depending whether they are determined by law or by the courts)¹⁸. We consider that these classifications don't refer exclusively to terms as modification of legal transaction, but to terms in general (legal terms, preclusive terms, statutes of limitation and etc.).

Terms as modifications of legal transaction are objective because they start to expire from the moment determined by the parties in the transaction. They are also dispositive because it is left up to the will of the parties to determine them. The classification of terms as legal and judicial is not applicable to these types of terms, because they aren't determined by law or by the courts, but by the parties in the legal transaction as its modification.

The effect of terms as modification of legal transaction is not separately regulated by the Law on Obligations. The Law stipulates that the same provisions regulating conditions are applicable to terms as well (art. 70)¹⁹. These provisions lead us to the conclusion that the suspensive terms delay the effect of the legal transaction, and the resolutive terms, upon their expiration, lead to termination of the legal transaction. When the legal transaction is terminated restitution is due.

¹⁷ See: A. Груиче, *op. cit.*, p. 247.

¹⁸ See: Д. Попов, *op. cit.*, p. 216-218.

¹⁹ Similar provisions are found in: the Law of Obligations of Montenegro (art. 74), the Law of Obligations of Serbia (art. 78) and the Law of Obligations of Croatia (art. 301). The German Civil Code also stipulates that same provisions that apply to conditions apply to terms. In some civil codes such as the French Civil Code, Spanish Civil Code and the Italian Civil Code, and also the Swiss Code of Obligations there are no separate provisions for terms as modification of legal transaction, and they are regulated in the section where terms in general are regulated. The French Civil Code defines the term as a circumstance that unlike the condition doesn't delay the effect of the legal transaction, but rather it delays its fulfillment (art. 1185). Also the French Civil Code stipulates that the term is determined to benefit the debtor, unless the legal transaction itself or other circumstances don't demonstrate otherwise. Similar to the French Civil Code terms are regulated in the Spanish Civil Code. The Spanish Civil Code prescribes that obligations may be discharged only after expiration of the term. Further, the Spanish Civil Code stipulates that the term is determined even if the exact day of its expiration is not known if it is certain that that day will come. If there is no such certainty, then according to the Spanish Civil Code, the modification should be considered as condition, and not as a term (art. 1125). Unlike the French Civil Code where it is stipulated that the term is in favor of the debtor, the Spanish Civil Code stipulates that the term is in favor of both parties, unless the circumstances don't determine that the term is in favor of one of the parties (art. 1127). The Italian Civil Code doesn't contain separate provisions regarding the term as modification of legal transaction, and it is regulated in the section referring to terms in general (art. 1183). Also, the Italian Civil Code stipulates that the term is in favor of the debtor, unless it is determined in favor of the creditor or in favor of both parties (art. 1184). The Swiss Code of Obligations regulates terms in general (art. 76-80) and contains no separate provisions with respect to the term as modification of legal agreements.

Calculating the terms is an important issue in civil law and it refers to determining the exact moment when a term starts to run, and the exact moment when it expires. The Law on Obligation recognizes the civil computation of terms according to which terms are determined by days, months and years (art. 69)²⁰. The term is calculated in 24 hours format that begins at 00:00 and it ends at 24:00. If the term is calculated in days, it begins to run the first day following the event that is determined to be the start of the term, and it expires the last day of the term. When the term is determined in weeks, months or years, it begins to run the day after the event that is determined to be the start of the term, and it expires the day or month that corresponds with the day when the term started to run. If there is no such corresponding day, the term expires the last day of the month. If the day when the term is meant to expire is a non-work day (weekend, state holiday etc.) then the term will expire the first following work day.

The term in the legal transaction may be determined in less precise timeframes such as “beginning of the month”, “middle of the month” or “end of the month”. The Law on Obligations makes these timeframes more exact by stipulating that “beginning of the month” is the first day of the month, “middle of the month” is the 15th day of the month, and the “end of the month” is the last day of the month (art. 69, par. 4). These provisions of the law are taken into account when there is no other alternative deriving from the nature of the legal transaction or the intent of the parties.

IV. Special stipulations

Special stipulations as modification of the legal transaction are special duties directed to one party in the legal transaction that is obliged to do something or to give something in favor of a third party or in his or her own favor. Special stipulations are allowed only in gift contracts and inheritance and they are directed to the beneficiary of the gift and the heirs. Since the special stipulation refers to a duty that a party must perform in order to receive the benefits of the legal transaction it is clear that by nature the special stipulation limits the manner in which one can dispose with the acquired rights.

The Law on Obligations defines special stipulations as a duty for the beneficiary of the gift that consists of “dare”, “facere” or “pati” in favor of a third party (art. 560). When the gift contract contains special stipulation, according to the Law of Obligations, the beneficiary is obligated to fulfill the stipulated duty. The donor has the right to demand fulfillment of the special stipulation, and if the stipulation is not fulfilled the donor may demand the return of the gift. The right of the donor to demand the return of the gift can also be transferred to the heirs. In any case, the heirs of the donor have the right to demand fulfillment of the special stipulation. However, the Law permits the beneficiary to free himself from fulfilling the special stipulation by renouncing the gift. Also, the beneficiary will not be obligated to fulfill the special stipulation if the duty is grater then the value of the gift or there are other reasons that cause difficulties in complying with the special stipulation.

The Inheritance Law²¹ regulates special stipulations in article 100 where it is stated that the testator may impose a duty for the person that stands to receive some benefit from the estate.

²⁰ There is also astronomic calculation of terms, where the term is calculated in periods shorter than a day, such as hour, minute or second. The astronomic calculation of terms is applied when the exact moments of start and expiration of the term are of crucial importance for exercising certain rights in civil law. For example, the registration of real rights in the Real Estate Cadastre is done by noting the exact day, hour and minute of the registration (art. 156, 157, Law of Real Estate Cadastre, Official Gazette of the Republic of Macedonia, number 55/2013). Also registration of pawn in the Pawn registry is done by noting the day and hour of the registration (art. 36,52, 56, Law for Contract Pledge, Official Gazette of the Republic of Macedonia, number 5/2003).

²¹ Official Gazette of the Republic of Macedonia, number 47/96.

Such stipulations are known as legacies, and they represent duties that need to be fulfilled by the heir or by other persons that stand to gain something from the estate of the testator. The fulfillment of the legacy is obligatory and the legatee has the right to demand fulfillment by the obligated person, and if such person hasn't been named, then the duty falls on to all the heirs proportionally to the benefit they stand to receive from the estate. The Law of Inheritance allows for the heir to be freed from the duty of fulfilling the legacy if it affects the value of their mandatory share of the estate (art. 106). In that case the duty of the heir will be proportionally reduced, unless the testator has stipulated otherwise in the will. According to the Inheritance Law, third party (legatee) has the right to demand the fulfillment of the legacy even in case when the obligated person hasn't become an heir, which leads to the conclusion that this duty isn't strictly bound to the person named in the will (art. 107, Inheritance Law). The right to demand the fulfillment of the legacy is terminated if the legatee has perished before the testator, if he or she renounced the legacy or if he or she was deemed as unworthy, as well as if the thing that was to be received has been destroyed after the death of the testator (art. 109, Inheritance Law). Fulfillment of the legacy may be demanded one year upon the day when the legatee became aware of his right of legacy (subjective term), but no later than 10 years upon the declaration of the will, or 20 years upon the death of the testator (objective terms) (art. 112, Inheritance Law).

In the Law on Obligations there are no special regulation concerning the effect of the special stipulation on the legal transactions. It is rational to assume that the same provisions regulating conditions and terms are appropriately applicable. However, special stipulations should in no way be confused with conditions as future and unpredictable events, because special stipulations are not future and unpredictable events, but duties for the beneficiary or the heirs.

The special stipulations are valid if they are possible, permitted, clear and non-contradictory. In legal transaction *inter vivos* special stipulations that are impossible, forbidden, unclear or contradictory lead to termination of the transaction and the beneficiary is due to give restitution²². As for the legal transactions *mortis causa*, special stipulations (legacies) that are impossible, forbidden, unclear or contradictory are considered as nonexistent (art. 100, Inheritance Law).

V. Summary

The paper presents the modifications as accidental elements of legal transactions that need to be explicitly agreed upon in order to become a part of the content of the legal transaction.

The permitted modifications of legal transactions, as the paper shows, are conditions, terms and stipulations.

- Conditions are future and unpredictable circumstances that effect legal transactions. For a condition to be considered as valid element of a legal transaction it needs to be: a future event, unpredictable, permitted, possible, clear and non-contradictory. Conditions are classified as suspensive (precedent) and resolutive (subsequent) dependent of their legal effect, positive and negative dependent on their content and causal, potestative and combined, dependent on the manner in which they occur. Conditions set in a legal transaction have different effect on the legal transaction in the time before its fulfillment, in the time after its fulfillment and in time when it is certain that the condition won't be fulfilled.

- Terms are periods of time that effect the legal transaction by suspending it or by terminating it. The terms differ from the conditions by the fact that its completion is certain and

²²In the Law of Obligations of Croatia if the special stipulation isn't fulfilled, the other party may demand fulfillment or termination of the contract (art. 302).

determined. Depending on the legal effect of the term, terms may be suspensive or resolute and depending on the degree of their determination they may be simple or complex. Since the effects of terms over the legal transaction are not separately regulated by the Law on Obligations, same provisions regulating conditions are applicable.

- Special stipulations as modification of the legal transaction are duties directed to one party in the legal transaction that is obliged to do something or to give something in favor of a third party or in his or her own favor. Special stipulations are allowed only in gift contracts and inheritance and they are directed to the beneficiary and the heirs.

The Law on Obligations defines special stipulations as a duty for the beneficiary that consists of “dare”, “facere” or “pati” in favor of a third party. The Inheritance Law regulates special stipulations in article 100 where it is stated that the testator may impose a duty for the person that stands to receive some benefit from the estate. Such stipulations are known as legacies. Special stipulations are considered to be valid if they are possible, permitted, clear and non-contradictory.

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