

дельных видов договора. Системная методология исследования юридического факта (юридического состава) и порождаемого им обязательства окажется

полезной также при изучении иных моделей гражданско-правовых отношений (например, охранительных обязательств).

ПРИМЕЧАНИЯ

¹ Правильнее говорить о договоре как тексте, имея в виду не только его письменную форму, но и устную.

² Иные существенные условия договора находят освещение в ходе выявления сущности (основного содержания) договорного обязательства.

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RESEARCH METHODOLOGY OF INDIVIDUAL TYPES OF THE AGREEMENT

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The author believes that the traditional scheme of studies of individual types of agreement has a number of serious drawbacks, chief among which is the failure of a logical row: the means by which the essence of the agreement reveals have different legal nature, which, however, is not specified, leading ultimately to a confusion of scientific concepts. Furthermore, it is undesirable to use when describing a certain kind of contract terminology, "contract elements", as theoretically leading to the undue blurring of its borders. Noted deficiencies can be avoided by using an agreement research methodology consisting in the systematic study of its various guises. Three qualities of the agreement (agreement-transaction, agreement-legal relationship and agreement-document) are closely related. In particular, their following dialectical unity must be considered: agreement-transaction in some form, and recognized as concluded, generates between certain subjects agreement-legal relationship of certain content, changing and ending upon certain circumstances, including breach of or disputes over the rights of the creditor. Therefore, in identifying the nature of a particular agreement model, it is necessary to consider the difference and the relationship between the individual manifestations of it. The epistemological process complying with this requirement, according to the logic of things, should include two complementary stages: first, the relevant agreement is investigated as a transaction and a relationship. According to this scheme, the study of a contractual obligation of a separate type is a systematic description of an agreement-transaction as a legal fact and contractual obligation as a legal relationship the transaction generated. During the analysis of the agreement-transaction, it is necessary to define the concept of this type of agreement, to allocate its variants, and also to characterize all phenomena, with which the perfection of the agreement-legal relationship is associated. In the study of agreement-legal relationship, subjects are identified that in some cases may not coincide with the subjects of transaction, in particular, in the case of an agreement in favor of a third party. However, the characteristic of subjects of a legal relationship gives a complete picture of the subjects of transaction. In addition, one must study the content of a legal relationship that allows to reveal the structure of the latter. System methodology of legal fact (legal structure) research and the obligation it generates will also be useful when studying other models of civil-law relations (e.g., enforcement of obligations).

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