

THE SYSTEM OF GROUNDS FOR INVALIDITY IN HUNGARIAN PRIVATE LAW

ISTVÁN SÁNDOR

full professor, DSc.

Faculty of Law, Eötvös Loránd University, Hungary

sandor.istvan@ajk.elte.hu

<https://orcid.org/0000-0002-6804-5665>

Abstract: The study analyses the system of grounds for invalidity that has developed in Hungarian private law. One of the starting points is the distinction between nullity and contestability, which distinguishes, depending on the gravity of the error in the contract, between *ipso iure* invalidity (nullity) and invalidity, depending on the juridical act of the aggrieved party or person with legal interest. The other systematisation aspect was based on the dogmatic triad of conditions of validity, so it was grouped according to the error of contractual intention, the error in the contractual juridical act, and the error in the intended legal effect. Errors of contractual intention include mistake, misrepresentation, and unlawful threats, while errors of the contractual juridical act include formal errors in the contract. Most of the legal facts were included among the errors of the intended legal effect, e.g. a prohibited contract, a contract contrary to good morals, a usurious contract, obvious disproportionality, nullity of transferring title as security, contract terms impairing consumer rights, etc.

Keywords: *invalidity, nullity, grounds for invalidity, system of invalidity, prohibited contracts, Civil Code*

1. INTRODUCTION

The study aims to present the system of grounds for invalidity in Hungarian private law. In doing so, of course, I take the legal provisions in force into account along with the categories developed by jurisprudence, but all in a subjective approach, also pointing out problems of legal interpretation. My goal is to trigger a debate on these issues.

Since the Hungarian Civil Code (hereinafter HCC) has no general part, it is possible to set up a framework for the invalidity of legal transactions by applying the concept developed for the invalidity of contracts. The starting point here is the rules under Title VI of the Sixth Book of the HCC, which systematises the grounds for invalidity in two respects. One of the starting points is the distinction between nullity and voidability which, depending on the gravity of the error in the contract, distinguishes between *ipso iure* invalidity (nullity) and invalidity depending on the juridical act of the aggrieved party or person with legal interest. The other systematisation aspect was based on the dogmatic triad of conditions of validity, so

it was grouped according to the error of contractual intention, the error in the contractual juridical act, and the error in the intended legal effect.

However, the framework outlined above only provides full guidance on the invalidity of contracts. On the one hand, this is because the grounds for invalidity contained in the other pieces of private law have not been specifically included in this dogmatic framework by the legislator. On the other hand, with regard to unilateral juridical acts, we also apply the rules for contracts. With these in mind, we need to analyse each of the invalidity rules one by one to determine which dogmatic category they fall into. The HCC for example attaches the legal consequences of nullity to nearly two hundred specific rules, not to mention the other pieces of private law legislation.

2. DELIMITATION OF INVALIDITY BASED ON STAGES OF LEGAL TRANSACTIONS

With regard to legal transactions, three main stages of existence can be distinguished, namely: establishment, validity, and effect. This clear and transparent systematisation is not only relevant from a dogmatic point of view, but also in practice. Whether we are talking about a legal transaction that has not been concluded or is invalid or ineffective, in all three cases we can conclude that the legal transactions are not suitable for producing the intended legal effect, and they may have different consequences. (Siklósi, 2005)

The legal effect of an invalid contract appears to be treated in the same way as that of a non-existent contract, but there is still a significant difference between the two. In the case of a non-existent contract, there is no consistency between the parties' legal declarations for the conclusion of the contract, i.e. the consensus, is replaced by dissent, or no agreement is reached on the essential content of the contract (e.g. the purchase price is completely missing in a sale agreement, etc.), the absence of which precludes the conclusion of the contract. A non-existent contract must be distinguished from an invalid contract in that the non-existent contract has no legal effect at all, so it does not have a negative legal effect either (*in integrum restitutio*). In case law, the problem of distinguishing between a non-existent and an invalid contract also arises in many cases. Thus in the case, for example, where the person acting on behalf of a legal entity concluding a contract was not the representative of the legal person, i.e., there was a case of pseudo-representation, the Supreme Court of Hungary declared the contract signed by the pseudo-representative null and void.¹ This typically happens when the question arises as to whether the contract is between the entity and the other party, or whether, as a result of the pseudo-representation, we are faced with a non-contract. Before the entry into force of the new HCC, case law was unanimous that where the conclusion of a contract requires the approval of a third party, the contract will not come into existence in the

¹ Supreme Court order No. Fpk: VI. 31.393/2001/2. It should be noted that under the rules of the new Civil Code, this would no longer be the applicable legal consequence in a similar case.

absence of such approval.² Under the rules of the new HCC, a contract subject to consent or approval shall be deemed valid, only the effect of the contract shall be subject to approval. (Art. 188 HCC)

A typical case of the distinction between the validity and effectiveness of a contract aimed at concealing assets comes where the HCC attaches the legal consequence of relative ineffectiveness to such a contract, while in similar circumstances, the Bankruptcy Act uses the legal consequence of contestability and invalidity. Within the HCC, we also find a different view in the case of testaments, where it prescribes the application of the legal consequence of ineffectiveness in the event of its revocation. (Bessenýó, 2001, p. 3; Földi, 1998)

3. SYSTEM OF GROUNDS FOR INVALIDITY IN DETAIL

A contract can be considered valid if the parties make a declaration in accordance with their will (i.e. their will and declaration are in conformity with each other), their declaration is in the form and bears the content required by law, and the declarations made by the parties are capable of reaching the intended legal effect. A valid contract must therefore meet three conjunctive conditions: the will, the declaration, and the desired legal effect shall be sound and intact. If any of the three elements listed above does not exist, the contract may be declared invalid.

3.1. Errors in contractual intention

3.1.1. Lack of capacity to act

Civil law requires the person making the declaration to be able to act at the time of making the declaration and to have at least limited legal capacity in the cases specified by law. Lack of legal capacity – as a general rule – results in the invalidity of the legal declaration.

Legal capacity is the ability of a natural person to acquire rights and assume obligations through a declaration of intention they made directly. At the same time, legal capacity presupposes a person's ability to assess the civil law consequences of their statements and to have the freedom of will to give direction to their statement. As regards the grounds for invalidity related to legal capacity, it can be said that they essentially result in the invalidity of the legal declaration due to the lack of intention to transact, but the Civil Code does not discuss grounds for invalidity related to legal capacity or the related rules together with the other errors in intention. On the other hand, the lack of capacity is partly treated differently. Emilia Weiss emphasised that the starting point for the regulation of invalidity due to lack of legal capacity is that the regulation is intended to protect the incapacitated. (Weiss, 1969, p. 333) Consequently, a lack of capacity to act is grounds for nullity but can only be invoked in the interests of the incapacitated party.

² Metropolitan Court of Appeal judgments, No. 16. Gf. 40.249/2006/9, and No. Gf. 14. 40.092/2006/3.

We come across a slightly different approach in literature as well. For a legal declaration to have legal effect, the legal capacity of the person is required. This criterion is partly objective and partly subjective. In the absence of legal capacity, it is not possible to speak either of an intention or a statement in a legal sense, i.e. the subjective side of a legal declaration made by an incapacitated person is incorrect for objective reasons. In that approach, therefore, the lack of capacity to act is in fact invalid because of the error in the intended legal effect. In my opinion, this theoretical issue merits further professional discussion. (Földi et al., 2020, pp. 487–488)

3.1.2. Mistake

A mistake must be distinguished from the non-existence of the legal transaction. If there is a complete lack of intention, the legal transaction will not take place. For example, in the case when a bill of exchange is completed for illustrative purposes only. A mistake can be distinguished from misrepresentation in that, in the case of misrepresentation, the other party caused the mistake of the contracting party. The mistake can also be distinguished from the warranty rights of the supplies, as the warranty rights can be enforced even in the case of a minor defect in the service, but the contractual intent is not open to challenge based on the mistake. It should also be noted concerning family law relations that grounds for contesting upon a mistake, misrepresentation, or unlawful threat of the Civil Code do not apply, they only provide a background regulation with regard to the relationship between the parties. We can distinguish between two cases of mistake: one-sided, and the common case. Anyone who was at fault for a material circumstance upon concluding the contract may challenge their contract declaration if the fault was caused or recognised by the other party. A mistake applies to a material circumstance if, with knowledge of it, the party would not have entered into the contract with or without other content. If the parties made the same erroneous assumption on a material issue at the time of concluding the contract, either party may challenge the contract.³ The contract may not be challenged by anyone who may have discovered the mistake or assumed the risk of the mistake. It should be mentioned, however, that the new Civil Code does not regulate the case of a mistake of law as a separate rule; in this case, the general rules of mistakes apply.

The grouping of Gyula Eörsi can be considered relevant in terms of typifying mistakes, so the mistake can relate to the subject, object, and content of the contract, any legal issue related to the contract, and the reason for the contract. (Eörsi, 1992, p. 102) For a mistake to trigger invalidity, the error must satisfy the conditions already known in Roman law as essential and tolerable (*essentialis et tolerabilis*), (Földi et al., 2020, pp. 482–483) that is to say, it is material and cannot be attributed to the erroneous party with due diligence. If there is a joint mistake of the parties, we can talk about practically hidden dissent, which may also result in the non-existence of the contract. In such a case, the question of whether a contract has not been

³ Supreme Court order No. Gfv. IV. 31.168/1999/6.

concluded or is open to challenge raises a serious demarcation issue, which can only be determined based on all the circumstances of the case.⁴

3.1.3. *Misrepresentation*

The rules concerning misrepresentation are based on the mistake, since anyone who intentionally misleads the other party, or keeps them believing their mistake, may challenge their contractual declaration as a result of the deception. If the deception is from a third party, the possibility of exercising the right to contest extends to it. Compared to a mistake, it is not enough for someone to have recognised the other party's mistake, deliberate and purposeful conduct is also required. In such a case, the other party's mistake is deliberately caused by the party through deception, which may be active conduct (*dolus malus*) or even the omission of some essential circumstances (*reticentia*). Failure to provide the other party with information on the material circumstances related to the subject matter of the contract – concealment of important information – is likely to mislead the other party. In such a case, challenging the contract on the grounds of misrepresentation may be effective. Hiding the fact that a car covered by insurance was previously totally damaged before concluding the insurance contract is typically likely to mislead the insurance company, as this is an essential circumstance meaning the insurer would either not conclude the contract or would only accept an offer for the insurance contract under significantly different conditions.⁵ In a specific case, the Supreme Court pointed out that when the seller did not inform the buyer that the apartment, which is the indirect object of the contract of sale, was damp, it thereby concealed material information that was suitable for misleading the other party.⁶ This case is a good example of the fact that the party has access to several different legal aids for the same situation, including warranty, guarantee, misrepresentation, and mistake, not to mention the obvious disproportionality of value and invalidity competing with other possible legal instruments.

3.1.4. *Unlawful threat*

If someone has been unlawfully threatened by the other party to enter into a contract, he may challenge the validity of the contract. This rule applies even if the threat was made by a third party and the other party knew or should have known about it. The threat must be capable of provoking serious fear in the person threatened. (Menyhárd, 2000, pp. 48–52) The threat should refer to the prospect of an illegal consequence, e.g. there is no illegality in applying lawful legal consequences, the prospect of the exercise of rights. About the three facts, two important demarcation issues arise. (Lallesovits et al., 1913, p. 381) On the one hand, concerning the magnitude and significance of a mistake, there is a possibility that no contract was

⁴ Supreme Court order No. Gf. VII. 30.955/2000/7.

⁵ Supreme Court order No. BH 2004.361.

⁶ Supreme Court order No. BH 1996.254.

concluded between the parties. On the other hand, a mistake is more general than the facts of the deception and an unlawful threat, it covers these cases.

3.1.5. Sham contract

At first glance, the Civil Code may unnecessarily, but clearly, provide that the validity of a contract shall not be affected by the secret or disguised reason of the contractor. A sham contract is void, and if it disguises another contract, the rights and obligations of the parties must be judged on the basis of the disguised contract.⁷ In the case of a sham contract, there is a difference between the actual intention and the statement of the parties, i.e. the parties make a statement to the outside world about a contract or a contract with different content than their actual agreement. If only the will of one of the parties deviates from the statement expressed, it is not a sham contract, just a unilateral secret reservation that does not affect the validity of the contract. (Gellén, 2008, pp. 30–35; Szalma, 1998, pp. 14–16). Attila Menyhárd aptly compares sham contracts to the joint secrecy of the parties and draws parallels with it. (Menyhárd, 2000, p. 13). A sham is a deliberate, two-sided act, in which the common intention of the parties is to refrain from concluding a contract based on their legal declarations or to enter into a contract with different content and other legal effects instead. The fictitious nature of a contract, and consequently its nullity, cannot be established if even one of several contracting parties is willing to conclude the contract in question. Unilateral pretence is therefore indifferent to the invalidity of a contract.

If the court declares the contract to be fictitious and invalid, it is also necessary to examine whether the veiled legal transaction is valid in itself and capable of producing legal effects. If the parties misrepresent or impersonate the title, the veiled transaction may still be valid.⁸ If the veiled legal transaction has the necessary content enabling the realisation of the parties' intentions, the legal effects thereof shall be enforced accordingly.

The occurrence of a sham contract is usually linked to either a legal prohibition or an adverse legal consequence, e.g., it is created to avoid public burdens or to circumvent the enforceability of the rights of a third party. (Nizsalovszky, 1933, p. 159; Haitsch, 2005, pp. 25–26). From this, there is a close link between the invalidity of sham contracts and the possible application of grounds for invalidity in the case of transactions with an error in the intended legal effect.

Regarding the errors of intention, it should be mentioned that the Civil Code provides special rules for gratuitous contracts. In the case of a free contract, the contract may be challenged in the event of a mistake, misrepresentation, unlawful threat, or deception on the part of a third party, even if those circumstances could not have been recognised by the other party. In contractual legal relations, the Civil Code invariably considers retaliation to be primary, and in comparison, unpaid

⁷ Supreme Court order No. BH 1997.593.

⁸ Decision of Regional Court of Appeal of Debrecen No. BDT 2006.1431. Supreme Court orders No. BH 1997.436., BH 2006.118., and BH 2006.17.

performance as an exception. It follows that it creates a more favourable position for the party performing free of charge for the legislature and allows the right to challenge the contract even if the other party could not have recognised the error of will. (Art. 6:93 HCC).

3.2. Breach of formality

The Civil Code contains general provisions regarding the formality of legal transactions and their violation, while their non-existence and violation are sanctioned with invalidity for certain specific rules. Examples of such cases are the conclusion of certain contracts (e.g. sale or gift of real estate, fiduciary asset management contract, etc.); formalities of testaments, last wills; property contracts of spouses, contracts governing the use of the joint home, contracts of sale, exchange, gift and loan concluded with each other during cohabitation, the sharing of the spouses' joint property by contract, authorisation to exercise parental supervision; general authorisation; property and housing contract of the life partners, etc.

Due to a breach of formality, a contract void upon acceptance of the performance shall be valid for the duration of the performed part, except in some special cases. There is a different approach to inheritance law. For a document to qualify as a will, it must contain an arrangement for property upon the death of the testator and seem to originate from the testator. Wills may be made either as a public will or a private written will, and oral wills may be made in the cases provided by the Civil Code. On the other hand, the invalidity and ineffectiveness of the will may only be established based on a statement of challenge, in contrast to contracts.

3.3. Errors in the intended legal effect

3.3.1. Contracts violating the law

Among the grounds for invalidity, the regulation of the Civil Code is the richest in terms of errors in connection with intended legal effect. The starting point for the regulation is an illegal (prohibited) contract, supplemented by a contract aimed at circumventing the law and obviously contrary to good morals. Compared to these general categories, there is a specific rule for a usury contract, a contract with an obvious disproportionate countervalue, the nullity of fiduciary credit guarantees, a contract with impossible performance, an incomprehensible clause, the nullity of conflicting clauses, and a contract that infringes consumer rights, a consumer waiver, an unfair term in a consumer contract, and an unfair general contract term. However, the scope of errors related to intended legal effect is limited to facts that, for the most part, can occur in virtually any type of contract, irrespective of the type of contract in question. In addition to the provisions in Chapter XVIII of the Civil Code, the Code contains several mandatory provisions in several places, in particular, the general part of contract law and individual contracts, which expressly (*expressis verbis*) contain the legal consequences of nullity for violation.

3.3.2. Contracts violating the law

A contract violating the law can be classified as a general category, in fact, it can be considered in a broader and narrower sense. In a broader sense, all grounds for invalidity can be included here, as the legal norm prohibits the act in question. In a narrower sense, this also includes cases in which the law imposes legal consequences for invalidity. This is usually defined in the Civil Code with the prospect of ‘void’ or ‘invalid’ legal consequences, or in another approach, it prescribes how a given legal transaction can be validly created. In the alternative to unlawful treaties, there are cases that – although not expressis verbis infringing a rule of law – are intended to circumvent the intention of the legislator (*in fraudem legis*) or are contrary to general social judgment (*contra bonos mores*). The latter can be judged individually and the power of the legislature is vested in the judge.

On the other hand, the prohibition of infringing the law by a contract arises if the legislator intends to impose a legal consequence of nullity on the prohibition expressed in the given norm within the violation of a mandatory rule concerning the content of the contract, but the nullity is not specifically mentioned in connection with the prohibition. We can find such mandatory rules, and without direct reference to nullity, a breach of these rules causes invalidity. In this context, we can refer to several provisions, e.g., at one time, a natural person may only be a member of one company with unlimited liability; a minor may not be a member of an unlimited liability company; a general partnership, a limited partnership and, a sole proprietorship may not be members of a company with unlimited liability.

The prohibition of conflict with the law is, of course, not only a violation of the mandatory rules of the Civil Code, but it applies to transactions that violate the provisions of other laws. (Darázs, 2008, p. 23) According to the prevailing perception, due to a violation of the Fundamental Law (Constitution), it is not possible to establish the nullity of the legal transaction as a violation of the law, as no rights and obligations of the parties arise directly from it. A directive, resolution, regulation, etc. cannot be considered legislation, even if it is issued by an authority. Lénárd Darázs points out that, if necessary, the nullity of a contract in conflict with foreign law can also be established if the contract is governed by foreign law due to the application of collision rules. (Darázs, 2008, p. 24) It should be mentioned that in the case of a contract that conflicts with the law, other legal consequences may arise instead of invalidity, if the contract is concluded with the content specified in the law, contrary to the different stipulations. (Vékás, 2008, p. 781; Wellmann, 2013, p. 135).

From the point of view of assessing a prohibited contract, the criminal rules contained in the Criminal Code are given a special assessment. It can generally be said that any contract is contrary to the law in which a service provided by one of the parties is a criminal offence in itself.⁹

⁹ Decision of Regional Court of Appeal of Szeged No. BDT 2006.1450; Supreme Court order No. BH 2009.46.

3.3.3. *Contracts contrary to good morals*

A systematic evaluation of contracts that are contrary to good morals would even deserve a separate study, so I just want to address two interpretation issues. (For monographic processing of the legal institution see Menyhárd, 2004.) Violation of the law also includes a violation of good morals. However, it does not follow, in my view, that in the event of a breach of law which does not have the effect of invalidity (there are other legal consequences, or based on an individual interpretation of the infringed law, the legislature does not intend to nullify the juridical act), a conflict with good morals can be established. Some grounds for nullity are special rules named in relation to the violation of good morals, therefore in the absence of additional facts, the prohibition of violation of good morals does not apply to these legal norms. Parallel enforcement in the case of a mistake, misrepresentation, and a transaction with obvious disproportionality of value is also excluded. Parallel enforceability would undermine these legal norms on the one hand, and prevent the legal and dogmatic aspects of concluding contracts that are open to challenge on the other hand.

The demarcation is more problematic in relation to the grounds for challenges in Act XLIX of 1991 on Bankruptcy Procedure and Liquidation Procedure (hereinafter Bankruptcy Act). The special feature of the rules set out in the Bankruptcy Act is that, in most cases, they only constitute grounds for a challenge if, and to the extent that, the party to the contract becomes insolvent and liquidation proceedings are subsequently instituted against him. [Art. 40(1) Bankruptcy Act] Failing this, these transactions are not invalid themselves and do not conflict with good morals in the absence of additional facts. It is not an ethical requirement but a road safety requirement that a company should satisfy its creditors and provide free benefits to others in a way that does not jeopardise its viability. In the event of an action to the contrary, both the debtor and the contracting party must take into account that the amount provided or the service provided will be part of the creditor's assets in the event of the debtor's insolvency. Since they are essentially rules on damages, it follows that these statutory facts do not constitute a *lex specialis* in comparison with contracts that are manifestly contrary to good morals. The situation is more complicated when judging a so-called fraudulent transaction regulated by Article 40(1) of the Bankruptcy Act. A fraudulent transaction is, in itself, manifestly contrary to good morals, since it expressly presupposes bad faith on the part of the contracting parties. In this sense, the transaction does not require additional facts to be considered that are manifestly contrary to good morals. According to case-law, it follows that if the time-limit for challenging the contract has expired, the interested party may, if the facts materialise, seek a declaration that the contract is contrary to good morals, without the need to prove additional facts.¹⁰ The fact that a fraudulent transaction can be regarded as a *lex specialis* in comparison with a transaction contrary to good morals only in the sense that the legal fact 'takes effect' when the

¹⁰ Supreme Court order No. Gfv.IX.30.038/2011/4.

winding-up proceedings are opened – but there is no legislative intent behind it – or after the commencement of the liquidation, this precludes a finding that the transaction was contrary to good morals.

3.3.4. Usurious contract and contract with obvious disproportionality of value

Usurious contracts, contracts with obvious disproportionality of value, and unfair contract terms can, in my view, actually be considered cases of contracts that are contrary to good morals. In the case of a usury contract, the contracting party enters into a remarkably disproportionate advantage by capitalising on the other party's position when concluding the contract, i.e., within the framework of freedom of contract, but still in an immoral way in the opinion of society. A usury contract, therefore, restricts the general possibility of freedom of contract to protect persons in a socially and economically weaker position, that is to say, on social and moral grounds. Case law basically distinguishes between objective and subjective elements, thus considering the vulnerable economic situation and the difference in value to be objective, while the targeted use of the vulnerable position of one contracting party by the other party is subjective.¹¹ The facts of a usury contract are very similar to a contract concluded with a strikingly large disproportionate value. The main difference in the latter case is the absence of a vulnerable position of the other party, and in the case of a usury contract, the stipulation of a disproportionate advantage. This practice is criticised by Menyhárd (Menyhárd, 1999, p. 234). The assessment of the concept of disproportionate advantage is fundamentally related to the consideration of the traffic habits and commercial practice for the given service for the contract to be classified as equally bilateral. Established case law generally identifies a disproportionate advantage as an obvious disproportion between the value of the service and the consideration, but the two concepts do not necessarily overlap.

I note that the principle of the application of contracts resulting in a synallagmatic obligation as a general rule is supplemented by a rule providing for the possibility of an action similar to that already known in Roman law and based on significant legal history. The rule, which has received significant criticism, is open to challenge because of the 'conflict between fairness and legal certainty'. Professor Lajos Vékás points out in a similar spirit that in a developed market economy the requirements of commercial turnover are also applicable to private law contracts, so the creation of certain protection situations is justified only in the field of consumer protection. (Vékás, 1998, p. 322. In a similar spirit see Kecskés 1999, p. 138; Kemenes, 2002, p. 23.) The *raison d'être* of the obvious disproportionality is questionable, and I agree with Professor Vékás that it could at most have a *raison d'être* in the case of consumer contracts; it is definitely necessary to regulate this. From a taxonomic point of view, obvious disproportionality is actually a kind of subsidiary adjunct to a mistake, which could in fact be placed in the category of contracts that, at most, are contrary to good morals.

¹¹ Csongrád County Court judgment No. 1.Gf. 40.212/1998.

3.3.5. *Unfair standard contract terms*

Unfair general contractual clauses are also actually contracts that are against good faith, as they are contracts with content incompatible with the principles of good morals and fair dealing. According to Attila Menyhárd, there are, in principle, two possible solutions for determining the relationship between an unfair standard contract term and a contract that violates good morals. One is to consider the invalidity of unfair standard contract terms as a special factual situation compared to contracts that are contrary to good morals, but he does not consider this solution acceptable. He believes the correct solution is that if a condition considered unfair is of such gravity, it may at the same time be contrary to good morals, and thus nullity must be established *ex officio*. If the unfair standard contract term does not otherwise make the contract manifestly contrary to good morals, the term can only be challenged. (Menyhárd, 2004, p. 261) I would add that even if the unfairness of a standard contractual term cannot be established, in the absence of other additional facts it is conceptually ruled out that it would be contrary to good morals.

3.3.6. *Invalidity in consumer contracts*

The next large group of grounds for invalidity due to lack of legal effect can be linked to consumer contracts. In these cases, the aim is to increase the protection of vulnerable consumers against business enterprises. This also includes the nullity of fiduciary credit collateral, if the consumer undertakes to transfer ownership or another right or claim or to establish a call option. Domestic legislation also took into account the need to somehow divert the previously controversial practice into a clear regulatory framework.

3.3.7. *The impossible service*

The rule of '*impossibilium nulla obligatio est*' already appeared in Roman law as a result of the Celsus regulation in relation to the obligation to transfer a thing that no longer exists. Old Hungarian law also considered a contract for the supply of a non-existent thing to be a base case. Nevertheless, a distinction between material and subjective impossibility was already made earlier. The former meant that the performance of the service was impossible for anyone, while a subjective impossibility would occur if the performance of the service was impossible only for the debtor in question.

In addition to impossibility in kind, the (economic) impossibility of interest – when the service could only be provided by disproportionately unreasonable victims – and legal impossibility were also acknowledged. The latter included the supply of a non-marketable thing or the assumption of an obligation contrary to a legal prohibition (e.g. the transport abroad of goods subject to an export ban). It can also be seen from the examples of the time that there is no clear demarcation line between legal impossibility and violating the law, the classification varies depending on the judicial practice.

3.3.8. *Incomprehensible, contradictory stipulation*

A contract aimed at an impossible performance shall be null and void. The performance of a service shall not be impossible due to the obligor not having the subject of the service upon the conclusion of the contract.

Whether specific contractual clauses are indeed incomprehensible or contradictory can only be determined by interpreting the contract. Each contract term must be interpreted in accordance with the contract as a whole. In the case of terms included in a general contract term or other terms not individually negotiated, a more favourable interpretation shall be adopted for the party applying the term; and in the case of a contract between a consumer and a business, the contradiction or doubt must be resolved by adopting an interpretation that is more favourable to the consumer than any provision of the contract. A stipulation can therefore only be declared null and void if the content of the provision cannot be revealed by interpretation, or the contradiction between the clauses cannot be resolved.

REFERENCES

- [1] Bessenýő A. (2001). A jogügylet érvényessége és hatályossága – Egy civilisztikai (ál?)probléma margójára. *Jura*, Vol. 7, No. 2, pp. 5–18.
- [2] Darázs L. (2008). A jogszabályba ütköző (tilos) szerződések semmissége. *Polgári Jogi Kodifikáció*, Vol. 10, No. 5–6, pp. 14–26.
- [3] Eörsi Gy. (1992). *Kötelmi jog. Általános rész*. Budapest: Tankönyvkiadó.
- [4] Földi A. (1998). Érvényesség és hatályosság a végrendeleteknél. *Közjegyzők Közlönye*, Vol. 45, No. 7–8, pp. 2–12.
- [5] Földi A. – Hamza G. (2020). *A római jog története és intézüciói*. Budapest: Oktatási Hivatal, pp. 487–488.
- [6] Gellén K. (2008). *A színlelt szerződés*. Szeged: Pólay Elemér Alapítvány.
- [7] Haitsh Gy. (2005). Adásvételi szerződés vételár része színlelt voltának megállapítása, *Gazdaság és Jog*, Vol. 13, No. 3, pp. 25–26.
- [8] Kecskés L. (1999). A szolgáltatás és ellenszolgáltatás értékaránytalanságának problémái a szerződési jogban II. – A felén túli sérelem (*laesio enormis*) klasszikus intézményének megjelenése és alkalmazása a magyar jogban. *Magyar Jog*, Vol. 46, No. 3, pp. 129–142.
- [9] Kemenes I. (2002). A szerződés érvénytelenségének egyes kérdései a gazdasági szerződéses gyakorlatban. *Polgári Jogi Kodifikáció*, Vol. 4., No. 2, pp. 7–27.
- [10] Lallossévits J. – Lányi M. (1913). *Magyar magánjog kézikönyve I*. Budapest: Grill Károly Könyvkiadóvállalata.

-
- [11] Menyhárd A. (1999) *Az uzsorás szerződésről*. In: Kisfaludi A. (ed.). *Liber Amicorum – Studia L. Vékás Dedicata*. Budapest: ELTE ÁJK Polgári Jogi Tanszék, pp. 221–240.
- [12] Menyhárd A. (2000). *A szerződés akarathibák miatti érvénytelensége*. Budapest: ELTE ÁJK Polgári Jogi Tanszék.
- [13] Menyhárd A. (2004). *A jóerkölcsbe ütköző szerződések*. Budapest: Gondolat Kiadó.
- [14] Nizsalovszky E. (1933). Fogyatékos jogügyletek. *Magyar Jogászegyleti Értekezések*, Vol. 1, No. 2, pp. 149–179.
- [15] Siklósi I. (2005). A nemlétező szerződés jogdogmatikai kategóriája és esetkörei a római jogban. *Jogelméleti Szemle*, Vol. 5, No. 4. <http://jesz.ajk.elte.hu/siklosi24.html> (Accessed: 15 December 2021).
- [16] Szalma J. (1998). Színlelt szerződések. *Jogtudományi Közlöny*, Vol. 53, No. 1, pp. 14–19.
- [17] Vékás L. (1998). Autópálya-használati szerződések és a Ptk. 201. § (2) bekezdése. *Magyar Jog*, Vol. 45, No. 6, pp. 321–327.
- [18] Vékás L. (2008). III. Cím Az érvénytelenség, I. Fejezet Semmisség és megtámadhatóság. In: Vékás L. (ed.). *Szakértői Javaslat az új Polgári Törvénykönyv tervezetéhez*. Budapest: Complex Kiadó, pp. 775–788.
- [19] Weiss E. (1969). *A szerződés érvénytelensége a polgári jogban*. Budapest: Közgazdasági és Jogi Könyvkiadó.
- [20] Wellmann Gy. (2013). A célzott joghatás hibája. In: Wellmann Gy. (ed.). *Az új Ptk. magyarázata. Volume V*. Budapest: HVG-Orac.