

M.K. Amanova

student

Scientific adviser

Liliya R. Nurova

candidate of philological sciences, associate professor, head of chair

Kazan branch of the FSBEI of HE «The Russian State University of Justice»

Kazan, Republic of Tatarstan

CONTRACT FORMATION:

COMPARING COMMON LAW AND RUSSIAN CIVIL LAW

Abstract: *this article covers the most basic legal concepts in the formation of contracts in common law and Russian civil law. It reveals core aspects of the principal terms of the contracts in common law and Russian civil law.*

Keywords: *contract formation, common law, Russian civil law, consideration, the subject of the contract.*

Аманова Мама

студентка

Научный руководитель

Нурова Лилия Рашиатовна

канд. филол. наук, доцент, заведующая кафедрой

Казанский филиал ФГБОУ ВО «Российский государственный

университет правосудия»

г. Казань, Республика Татарстан

ЗАКЛЮЧЕНИЕ ДОГОВОРА: СРАВНЕНИЕ ОБЩЕГО ПРАВА

И РОССИЙСКОГО ГРАЖДАНСКОГО ПРАВА

Аннотация: *в этой статье рассматриваются основные юридические понятия, относящиеся к заключению договоров в общем праве и российском гражданском праве. Авторами раскрываются основные аспекты условий договоров в общем праве и российском гражданском праве.*

Ключевые слова: заключение договора, общее право, российское гражданское право, рассмотрение, предмет договора.

The contract law both in common law and the civil law system is built with the help of various rules which may be connected more than we might think. This paper, however, focuses on the most fundamental concepts of contract formation such as a consideration and a subject of agreement. These two elements might be different in nature, at the same time they share the meaning in both legal systems. This work aims to cover the core points of convergence and differences of those elements.

To begin with, in common law a consideration is an essential condition for the formation of the contract is [3, p. 56–69]. This term basically encompasses mutual obligations of parties. In other words, it should be expressly stated in the contract that parties make an exchange for something that has been bargained for. Consequently, a failure to draft a proper consideration clause would mean that the contract was not formed. As a result, if parties end up having a legal dispute – the court will establish that there is no contract and, thus, no possibility to enforce it.

In Russian civil law, there are two prerequisites for the formation of a contract. Firstly, one needs to follow certain rules of the format of a contract [5] At the same time, there is no demand for such format under common law. The contract can be drafted on a napkin in a restaurant and still be enforceable. Secondly, it is necessary for the parties to determine all the essential terms of the contract. For instance, the subject of a contract must be expressly stated. The understanding of the subject of a contract can be quite controversial. Some publicists consider that the subject of a contract is quite the same as the object of the obligation or it means mutual obligations. The latter approach makes the subject very similar to consideration in common law as discussed earlier.

To illustrate the mechanism of the ideas mentioned above, the author will further focus on a purchase agreement. The essential term in that type of agreement is determined as the name and the quantity of goods which is very much the same in common law. In particular, under American Uniform Commercial Code this is enough for a contract to be formed [7]. On the contrary, if the purchase agreement lacks the name

and quantity of the goods – there is no contract under both legal systems. Additionally, if the name of the goods is too broad or the good is not properly identified – the court will not enforce the contract either [2, p.10–11]. This rule applies both in common law and Russian civil law. The reasons for that might be different though. For instance, in common law, if the good is not specifically identified the court will establish that parties simply did not intend to enter into a contract. Whereas in Russian civil law the core reason is that if a good is not identified it will be impossible to decide the dispute over the indefinite object [1, p. 18–21].

Thus, although consideration and subject might be similar, these concepts are not the same. It should be noted that in Russian civil law each contract has its certain type. As a rule, the subject of every type of contract will be different. On the contrary, common law system does not specify any types of contracts. With this in mind, a consideration is perceived generally the same for every contract. All things considered, it is reasonable to assume that «a consideration» in common law system and «a subject» in civil law system illustrate core prerequisites for contract formation in both legal systems respectively. However, the content of those prerequisites is different.

Список литературы

1. Ivanova E. V. Civil Law. Special Course, 5th Edition, Textbook and workshop for higher education institutions, 2020. – P. 18–21.
2. Ivanova E. V. Contract Law. Special Course, 3rd Edition, Vol.2, Textbook and workshop for higher education institutions, 2021. – P. 10–11.
3. Verkerke J.H. Contract Doctrine, Theory and Practice. Vol.1, CALI eLangdell Press 2012. – P. 56–59.
4. Otis F. Wood, Appellant, v. Lucy, Lady Duff-Gordon, Respondent. 222 N. Y. 88, Appellate Division of the Supreme Court of the State of New York, First Department.
5. The Civil Code of the Russian Federation, Part One No.-51 FZ, Nov 30, 1994. URL: http://www.consultant.ru/document/cons_doc_LAW_5142/ (accessed: 30.01.2022).

6. The Civil Code of the Russian Federation, Part Two No.-51 FZ, Nov 26, 1996.
URL: http://www.consultant.ru/document/cons_doc_LAW_9027/#dst0 (accessed: 30.01.2022).

7. Uniform Commercial Code (UCC), 2020 ed. URL: <https://www.law.cornell.edu/ucc> (accessed: 30.01.2022).