Olga Kuznetsova

PROBLEMS OF THE TEACHING ON CIVIL LEGAL RESPONSIBILITY

No. 5, 2017

The article is devoted to the methodological problems of the doctrine of civil liability as a kind of legal liability. In domestic civil science, it is a kind of "complex of consequences" for both illegal and lawful behavior, and for guilt and without guilt, and for one's own and for other people's actions, and for actions and for an event, in the presence and in the absence of direct causality. The main reason for this scientific situation is the neglect of methodological principles and research approaches. The three most pressing methodological issues of civil law research of responsibility are highlighted and considered. First, the civil law knowledge of responsibility on many issues is not consistent with the theory of law, which has methodological significance for all industrial sciences: most of the measures called civil liability do not correspond to the essence, principles, goals, objectives and functions of legal responsibility. Secondly, civil liability is investigated mainly with the help of the dogmatic method of cognition, which does not allow going beyond the boundaries of the often changed and supplemented positive law. At the same time, the legislator continuously "issues" new measures redistributing property from one person to another (compensation for lawful actions, compensation for property losses), forcing him to constantly adjust the theory to the legislation, as a result of which the doctrine of civil liability loses all its boundaries and signs of scientific character ... Thirdly, in the study of civil liability, an interdisciplinary approach is practically not used, acceptable results and methods of research in related sciences (economics, sociology, psychology) are not used, which could largely contribute to further knowledge of the essence of responsibility in civil law. The solution of these methodological issues is a prerequisite for both strengthening the doctrine of civil liability and its further effective development, and the successful enforcement of regulatory rules about it.

Elena Bogdanova

TRENDS IN THE DEVELOPMENT OF CIVIL LEGAL RESPONSIBILITY FOR BREACH OF OBLIGATIONS: PROBLEMS AND PROSPECTS

No. 5, 2017

The article reveals the essence of two processes currently taking place simultaneously : socialization and humanization of civil law. These processes are reflected in the transformation of the institution of civil liability. Based on the analysis of legislation, judicial practice and doctrine, it is possible to identify certain trends in the development of civil liability for violation of obligations. First, the introduction of the principle of good faith into civil legislation has had a significant impact on the legal norms governing civil liability for violation of obligations. The paper substantiates the conclusion that the evolution of the principle of good faith of participants in civil transactions has led to the development of the principles of justice and proportionality as the main criteria of civil liability. Second, the search for an effective liability model continues, combining standards of both guilty liability, providing fair compensation , and innocent , aimed at achieving fair compensation and distribution of losses for non- performance of the contract. Third, taking into account the foreseeability of consequences in the construction of civil liability and subjectivization of the causal relationship. A feature of the development of cause-and-effect relationships in contractual relations is that the circumstances influencing its development pass through the consciousness of the parties to the contract, and therefore they can, with a certain degree of probability, foresee the legal consequences, as well as correct the development of the causal relationship through the circumstances provided for in the contract ... Fourth, the compensatory orientation of civil liability measures is emphasized - the protection of the creditor 's performance interest . Fifth, the development of dispositive principles of civil liability. This tendency is manifested in the fact that

the parties have the right, at their discretion, within the limits established by law, to limit or increase the liability of the debtor, to adjust the conditions for its occurrence. Sixth, the tendency in the development of the institution of civil liability is the expansion of the scope of non-contractual liability and the strengthening of the interaction of contractual and tort liability. The expansion of the scope of non-contractual liability can be illustrated by examples of the reception by Russian civil law of the institution of pre-contractual liability (culpa in contrahendo) and the attempts of judicial practice to compensate for "net economic losses". Based on the study, it can be concluded that the reception of a number of legal structures of European law and their adaptation to the peculiarities of Russian civil circulation is designed to form a new concept of civil law, in general, and the institution of civil liability, in particular, based on the principles of justice, proportionality and good faith.

Bulaevsky Boris Alexandrovich

PRESUMPTIONS IN GENERAL RULES ON LIABILITY FOR BREACH OF OBLIGATIONS

No. 5, 2017

The article proposes an analysis of the norms of Ch. 25 of the Civil Code of the Russian Federation for the use of presumptions in them, as well as other legal structures based on assumptions. The author's understanding of presumptions as models of legal phenomena used to overcome uncertainty in legal relations for the optimal combination of the interests of their participants is revealed. Attention is drawn to the functions of legal presumptions and their conditionality by the functions of legal phenomena modeled in presumptions, which sets a benchmark for the effective use of such constructions in protecting the interests of participants in legal relations.

It is noted that the possible existence of uncertainty regarding the fact of a violation of an obligation at the stage of applying for protection does not create

preconditions for the use of presumptions in civil law, but creates the need to establish facts of violation of obligations. At the same time, assumptions made in such situations are formalized not into substantive, but procedural presumptions.

The main attention in the work is focused on the study of the issue of the application of presumptions and various assumptions when regulating the rules on the conditions for bringing debtors to civil liability for violation of obligations (unlawfulness of the behavior of the person who violated the obligation; causal relationship between unlawful behavior and violation of obligation, guilt).

The conclusions about the impossibility of applying presumptions when establishing the unlawfulness of the behavior of the person who violated the obligation, and when determining the causal relationship between the illegal behavior and the fact of the violation of the obligation are substantiated.

The possibility of applying assumptions about the negative consequences of violation of obligations and the forms of their expression in the current norms and legal positions of the Supreme Court of the Russian Federation, reflecting approaches to the application of novels of civil legislation, is considered.

When assessing the conditions for the application of the presumption of guilt, an analysis of its nature is proposed and the limits of its application are established. The impossibility of applying the presumption of guilt when assessing the creditor's behavior has been substantiated.

The general conclusion about the objective necessity of assumptions in the regulation of relations on the application of measures of civil liability is formulated.

Gr **yin Oleg Sergeevich**

SPECIFICATIONS OF SECURITY LIABILITY

No. 5, 2017

The article examines the features of the manifestation of the construction of civil liability in relation to legal obligations arising from forfeit, pledge, retention

of the debtor's thing, surety, independent guarantee, deposit and security payment. It is concluded that in relation to the penalty and the deposit, civil liability determines the main content of the obligations themselves.

The security function of the deposit and the forfeit is exhausted by the incentive for the proper performance of the obligation, therefore the agreement on the deposit and the forfeit can be qualified as an agreement on the establishment of special measures of liability.

With regard to pledge, withholding and security payment, liability can be provided by agreement of the parties and is an additional sanction for violation of certain obligations.

For surety, the concept of responsibility is key - it allows you to delimit the content of the surety agreement from the main obligation. The surety undertakes to fulfill his own obligation arising from the surety agreement, and not to compensate for losses or fulfill the obligation for the debtor under the main obligation. The terms "joint and several" and "subsidiary" in relation to the "liability" of the surety mean the corresponding types of surety.

However, at the level of judicial practice, an additional manifestation of the property of the surety accessory was formed - the surety, as a general rule, is not responsible for the violation of his obligation, otherwise may be provided by the surety agreement.

With regard to an independent guarantee, the opposite solution was formulated, the guarantor, according to the general rules, is liable like any other debtor under a pecuniary obligation. Therefore, such a manifestation of the property of accessory methods of ensuring the fulfillment of obligations, as limiting the liability of the person who provided the security, can be considered as a general rule for this group of security structures.

Dolinskaya Vladimir Vladimirovna

SPECIFICATION OF LIABILITY ON SUBJECTIVE COMPOSITION OF LEGAL RELATIONSHIPS

No. 5, 2017

From the standpoint of the systematic nature of the reform of civil legislation, the article compares the norms on civil liability and the legal status of participants in civil relations. The features of liability are highlighted and illustrated depending on the legal status within the obligation relationship (debtor - creditor).

In business relations, compound interest, the right to reduce a penalty in case of violation of an obligation by an entrepreneur, limitation of the entrepreneur's liability in the ways of ensuring the fulfillment of obligations, limitation of the possibilities to invalidate an agreement related to the implementation of entrepreneurial activities by its parties are considered.

Revealed the specifics of the responsibility of the contractor under a compensated contract to the consumer in the legislation on the protection of consumer rights.

The features of penalties under the legislation on the contract system in relation to the state (municipal) customer and supplier (contractor, performer) are considered.

Analyzed and systematized novels about responsibility related to the specifics of the legal status of legal entities.

The problems for the legal institution of responsibility are identified, the tendency towards recognition of quasi-legal personality for the bodies of a legal entity.

Certain issues of the ratio and distribution of responsibility between legal entities, their bodies and members of bodies of legal entities in internal relations and in transactions with other persons are considered.

As a result, the specificity and development trends of the institution of civil liability in terms of the subject composition were revealed.

Novels about liability related to the specifics of the legal status of legal entities are actually due to the new edition of Chapter 4 of the Civil Code and the extension of the application of general provisions on obligations to claims arising from corporate relations.

In internal relations, a member of the body of a legal entity is immediately liable to the organization. In other respects, where the legal entity itself acts outwardly, this organization first suffers unfavorable consequences, and then, in a recourse procedure, it can recover its losses from a member of the body of the legal entity.

Vorozhevich Arina Sergeevna

Kozlova Natalia Vladimirovna

UNFAIR COMPETITION OR ABUSE OF RIGHT IN TRADEMARK REGISTRATION: QUALIFICATION PROBLEMS AND PROTECTION

No. 5, 2017

The criteria for distinguishing between the compositions of unfair competition and abuse of the right when registering trademarks have not been developed at the present time either at the level of doctrine or in judicial practice. These institutions are often confused.

Within the framework of this article, the authors substantiate the inexpediency of applying the institute of unfair competition to actions for registering a trademark. Based on the analysis of judicial practice, it can be concluded that unfair registration of trademarks does not always affect competition. Even in cases where there is a possibility of such an impact, the courts do not establish its existence, do not determine the range of potential competitors of the copyright holder.

The conclusion about the good faith or bad faith of the applicant for the registration of a trademark should be made from the point of view of compliance with the functions of the trademark (improving the quality of goods, reducing the

costs of consumer choice, etc.), and not only from the standpoint of ensuring free competition.

If a designation previously used by other persons without registration is registered as a trademark, it is necessary to distinguish between two cases.

First, when an applicant is interested in using a trademark, associating his own positive reputation with it. Before filing an application for registration, he used, along with other persons, a designation that had not yet lost its distinctiveness. In such a situation, registration corresponds to the institutional purpose of a trademark, although it infringes on the interests of competitors. The designation becomes a full-fledged identifier indicating the source of origin of the goods, the risk of misleading consumers is reduced. Therefore, the trademark registration must be preserved.

Secondly, when an application for registration of a trademark is submitted by an entity who is not interested in using the trademark, but acts solely for the purpose of causing harm to a competitor, blocking its activities. In this case, the trademark registration should be invalidated.

From the point of view of the current legislation, the registration of a trademark for improper purposes should be qualified as an abuse of the right.

De lege ferenda registration of a trademark on grounds of bad faith must be contested immediately in court. With the current legislative regulation at the level of judicial practice, it is justified to formulate an unambiguous conclusion about the possibility of making an independent claim for recognizing the registration of a trademark as an abuse of law.

Frolova Natalia Mikhailovna

LIABILITY OF THE SELLER OF THE COUNTERFEIT GOODS AND METHODS OF PROTECTING THE BUYER'S RIGHTS

No. 5, 2017

The article analyzes the Federal Law No. 42-FZ, adopted on March 8, 2015, "On Amendments to Part 1 of the Civil Code of the Russian Federation", developed on the basis of the Concept for the Development of Civil Legislation of the Russian Federation, as well as a draft law on amendments and additions to the Civil Code of the Russian Federation. This law amended Sec. 3 of the Civil Code of the Russian Federation, which contains general provisions on obligations and contracts. The institution of responsibility has also undergone significant changes. The paper gives an assessment to those included in Ch. 25 of the Civil Code of the Russian Federation to amendments concerning the rules of legal regulation of two forms of civil liability: compensation for losses, payment of a penalty. The author tried to connect the problem of liability with the problem of protecting the rights of the creditor. Noting the dependence of the scope of responsibility on the chosen methods of protection, the author tried to establish their connection using the example of a contract for the sale of counterfeit goods.

The article deals with questions about how applicable the norms of the legal consequences of delivery of defective goods to relations for the supply of counterfeit goods, analyzes and other possible ways to protect the rights of the buyer of the counterfeit goods, as well as possible forms of liability counterfeit goods suppliers for the buyer of those or other methods of protection ... The question of the possibility of recognizing the transaction as invalid is being discussed. The author tried to compare and identify the most effective way to protect the rights and interests of the purchaser of counterfeit goods, based on an analysis of the relevant norms of the Civil Code of the Russian Federation and judicial practice.

Particular attention is paid to the mechanism for the implementation of the principle of full compensation for losses, the analysis of new norms of the Civil Code of the Russian Federation and provisions that expanded the scope of this principle, due to which the liability of the debtor acquired more delineated boundaries and the creditor had additional opportunities to protect their rights.

Egorova Maria Alexandrovna

COMPENSATION FOR DAMAGES AS A METHOD FOR PROTECTING CIVIL RIGHTS IN VIOLATION OF ANTI-MONOPOLY LEGISLATION

No. 5, 2017

The article discusses the problems of compensation for losses caused by violations of antimonopoly legislation as a way to protect civil rights. It is noted that the protection of civil rights affected as a result of violations of antimonopoly legislation is indirectly possible not only in a judicial, but also in an administrative manner, even without the participation of the courts, since this protection can be carried out within the competence of the FAS RF established by law. The conclusion is substantiated that the antimonopoly compensation offered by the antimonopoly authority as an alternative to damages is a purely restorative, not punitive (punitive) measure of liability, even though it is applied in response to a violation of antimonopoly legislation. It is argued that the issue of the content and composition of the property consequences of violating antimonopoly legislation is directly related to the reasons for the occurrence of losses. It is shown that the main criterion for the application of civil law protection measures in violation of antimonopoly legislation is the sign of the connection between the fact of an administrative offense and the fact of the existence of a civil law relationship, in which there is a violation of property rights or the basis for compensation for losses. According to this criterion, the author classifies two types of relations: 1) violation of antimonopoly legislation directly related to civil relations; 2) an antimonopoly violation that has no direct connection with a civil legal relationship, in which property damage occurs indirectly (indirectly). The article analyzes in detail certain types of grounds for compensation for losses, which are considered abuse of a dominant position, acts of unfair competition, collusion during tenders. A violation of the prohibition of abuse of law, which has the same

universal character and the norm of Art. 15 of the Civil Code of the Russian Federation.

Ostrikova Larisa Kuzminichna

SCOPE, SIZE AND PROCEDURE FOR COMPENSATION FOR DAMAGE CAUSED IN THE PERFORMANCE OF CRIMINAL PROCEDURAL ACTIVITIES

No. 5, 2017

The article discusses the problems of compensation for losses caused by violations of antimonopoly legislation as a way to protect civil rights. It is noted that the protection of civil rights affected as a result of violations of antimonopoly legislation is indirectly possible not only in a judicial, but also in an administrative manner, even without the participation of the courts, since this protection can be carried out within the competence of the Federal Antimonopoly Service of the Russian Federation established by law. The conclusion is substantiated that the antimonopoly compensation offered by the antimonopoly authority as an alternative to damages is a purely restorative, not punitive (punitive) measure of responsibility, even though it is applied in response to a violation of antimonopoly legislation. It is argued that the issue of the content and composition of the property consequences of violating antimonopoly legislation is directly related to the reasons for the occurrence of losses. It is shown that the main criterion for the application of civil law protection measures in violation of antimonopoly legislation is the sign of the connection between the fact of an administrative offense and the fact of the existence of a civil law relationship, in which there is a violation of property rights or the basis for compensation for losses. According to this criterion, the author classifies two types of relations: 1) violation of antimonopoly legislation directly related to civil relations; 2) an antimonopoly violation that has no direct connection with a civil legal relationship, in which property damage occurs indirectly (indirectly). The article analyzes in detail

certain types of grounds for compensation for losses, which are considered abuse of a dominant position, acts of unfair competition, collusion during tenders. A violation of the prohibition of abuse of law, which has the same universal character and the norm of Art. 15 of the Civil Code of the Russian Federation.

Slesarev Vladimir Lvovich

Kravets Victoria Dmitrievna

PRINCIPLE OF PROPORTION AND APPLICATION BY THE COURTS Art. 333 of the Civil Code of the Russian Federation

No. 5, 2017

The article examines the influence of the general legal principle of proportionality of liability on the application by the courts of Art. 333 of the Civil Code of the Russian Federation. Given the uncertainty used by the legislator in Art. 333 of the Civil Code of the Russian Federation of concepts, their evaluative nature, special attention is paid to the analysis of the explanations of the Supreme Court of the Russian Federation and judicial practice on the issue of obvious disproportion of the penalty payable to the consequences of violation of obligations. In particular, the author analyzes the grounds for reducing the penalty payable, the criteria for establishing an explicit disproportionate penalty to the consequences of the violation of the obligation.

The authors conclude that the measure of protection - the reduction of the penalty - can be applied in a number of cases in the absence of losses on the side of the creditor.

The article defines the ratio of Art. 333 and 10 of the Civil Code of the Russian Federation, which makes it possible to implement the idea of proportionality of civil liability on the basis of the principled provision - the inadmissibility of abuse of law; reveals cases of a possible reduction in the amount of the penalty solely on the basis of Art. 10 of the Civil Code of the Russian Federation.

Based on the analysis of the principle of proportionality of liability, the limits of reducing the amount of the penalty payable are identified.

The authors conclude that Art. 333 of the Civil Code of the Russian Federation is aimed at implementing the general legal principle of proportionality and proportionality of responsibility, which makes it possible to raise the question of its relationship with public order. The concept of public order is characterized by the authors as evaluative and in many respects legal and political, formally not having a specific content, and therefore rather complicated for a uniform interpretation. Analyzing the relationship between the concepts of "public order" and "fundamental principles", the authors conclude that the fundamental principles of law form the basis of public order. This conclusion is confirmed by the provisions of judicial practice.

The article raises the question of whether the unjustified application or non-application by the court of Art. 333 of the Civil Code of the Russian Federation, in the event of a clear disproportionate penalty to the consequences of a violation of an obligation, to be considered as a violation of public order The absence of uniform judicial practice on this issue is noted.

Kharitonova Yulia Sergeevna

LIABILITY OF THE PARTIES UNDER THE CONTRACT OF TRUST MANAGEMENT OF THE INHERITANT PROPERTY OF THE ENTREPRENEUR

No. 5, 2017

The hereditary mass, which includes corporate rights, securities, enterprises, intellectual rights, real estate, often requires the introduction of trust management for a period before the heirs enter the inheritance. The rules on the trust management of inherited property refer the law enforcement officer to the general provisions of Ch. 53 of the Civil Code of the Russian Federation, designed primarily for business relations. However, the specifics of the nature of trust

management, by virtue of the law, does not allow the general provisions on the responsibility of the founder of the management and the manager to be applied to it, which leads to the insecurity of the participants in the relationship of trust management of the entrepreneur's hereditary property. By virtue of the nature of the contract for the trust management of property by the estate of inheritance, the notary, as a founder, must not and cannot be responsible for all his property for debts arising in connection with the performance of the trust manager of his duties under the trust contract. At the same time, in practice, it will be difficult to find a citizen who agrees to carry out trust management of someone else's property for several months, provided that he, often not being a professional, bears unlimited liability for debts from the trust management agreement to third parties and beneficiaries. The lack of a direct legislative establishment of the possibility to impose the risks of incurring losses on the inherited property itself, as well as granting beneficiaries only the right to claim against the trustee and the opportunity to offer and sometimes insist on the candidacy of a trustee, excludes the possibility of effectively managing the inheritance . Irrational decisions incorporated in the legislative regulation of the rules on liability for the obligations of the trustee arising in the management of property do not allow directly and reliably protecting the interests of beneficiaries and ensuring the protection of the property sphere of a notary. In our opinion, there is a need to bring the law into line with the actual circumstances of judicial and notarial practice in order to reliably protect the interests of beneficiaries and ensure the protection of the property sphere of the notary.

Ayusheeva Irina Zoriktuevna

PRE-CONTRACTUAL LIABILITY: NEWS IN CIVIL LAW AND JUDICIAL PRACTICE

No. 5, 2017

As a result of the reform of civil legislation, the norms of obligation, including contract law, were significantly modernized. One of the most discussed novelties of civil legislation was the new rules on pre-contractual liability. Currently, the provisions concerning the regulation of relations related to bringing the parties to the negotiations to responsibility at the stage before the conclusion of the contract are included in the general part of contract law. In this regard, the question of determining the legal nature of pre-contractual liability, its grounds and conditions has acquired particular relevance not only from a theoretical, but also from a practical point of view. Is it possible, on the basis of an analysis of the previously valid and new norms of the Civil Code of the Russian Federation on pre-contractual liability, to draw a conclusion about the formation of a single concept in domestic law? In addition to problematic issues related to the nature of pre-contractual liability, the issues of determining the grounds and conditions for bringing to justice for unfair negotiation, defining the very concept of negotiations on concluding an agreement, determining their beginning and ending, the ratio of the norms contained in Art. 434.1 of the Civil Code of the Russian Federation with the norms of Art. 431.2, 421, 178, 179 of the Civil Code of the Russian Federation and a number of others, as well as issues of determining the amount of compensation for losses in case of unfair negotiation. As a result of the analysis of new provisions of legislation, judicial practice, doctrine, one can come to the conclusion that pre-contractual liability in domestic law is not homogeneous in nature. Despite the fact that the provisions on pre-contractual liability are placed in the general part of contractual law, it is reasonable to conclude that it is impossible to recognize pre-contractual liability as purely contractual, since in the case of an unconcluded contract, contractual legal relations do not arise in themselves. Depending on the grounds and conditions for the occurrence of liability for violations at the pre-contractual stage, it can be expressed in the form of contractual (if the contract was eventually concluded) or non-contractual (quasi -contractual , tort) liability. The conclusion is substantiated that in some cases pre-contractual liability arises in connection with the abuse of

the right to conclude or refuse to conclude an agreement, the right to independently conduct negotiations and decide on their continuation.

Dobrovinskaya Alla Vladimirovna

CONCEPT AND CASES OF LIMITED LIABILITY IN CIVIL LAW

No. 5, 2017

The article analyzes the legal mechanisms for establishing limited liability in the civil law of the Russian Federation. At the same time, the very concept of civil liability, the legal nature, essence and main functions are disclosed first.

The author proceeds from the fact that the amount of damages to be reimbursed may be limited both by law and by an agreement on the basis of Art. 15 and 400 of the Civil Code of the Russian Federation. Losses are considered both in historical and comparative legal aspects as the main form of civil liability. The principle of full compensation for damages is analyzed as one of the fundamental principles of civil law, however, given its compensatory and restorative function, it is concluded that the modern development of market relations contributes to an increase in cases of limited liability in Russian legislation, thereby going against one of the most significant principles of civil law on compensation for damages in full.

The legal nature of limited liability is considered in detail, first of all, taking into account the impossibility of reimbursing indirect losses based on the norms of the current civil legislation. Disclosed and studied such a concept as the usual conditions of civil circulation, enshrined in Art. 15 of the Civil Code of the Russian Federation, at the same time, on the basis of doctrinal conclusions, the opinion is substantiated that this legal category also affects the amount of compensated losses and, in certain cases, limiting their amount.

The legal mechanism of the possibility of introducing limited liability for certain types of obligations and for obligations related to certain types of activities

on the basis of the provisions of Article 400 of the Civil Code of the Russian Federation is considered.

The main cases of limited liability, fixed both in the general provisions of the Civil Code of the Russian Federation and in its special part, are named and analyzed. The main forms of limited liability are analyzed, with special attention paid to compensation for losses in the form of real damage, without taking into account lost profits.

Special attention is paid to cases of prohibition of limited liability, the norms establishing such prohibition are indicated and analyzed in detail.

The article presents the doctrinal conclusions of well-known civil scientists of both the Soviet and modern periods regarding the validity of establishing limited liability in the most significant areas of civil turnover. On the main analyzed issues of this scientific study, the author's arguments are also given .

In the conclusion, conclusions are drawn that have scientific novelty regarding the place, role, as well as the way for the further development of the institution of limited liability in domestic civil law.

Poduzova Ekaterina Borisovna

ORGANIZATIONAL RESPONSIBILITY: PROBLEMS OF DEFINITION AND INTERPRETATION

No. 5, 2017

In the article, on the basis of current civil legislation and law enforcement practice on responsibility and its measures, the problems of defining and interpreting organizational responsibility are identified, and own approaches to their solution are proposed. The author systematizes and analyzes various concepts of organizational sanctions, organizational methods of protecting civil rights, as well as pre-contractual liability. Special attention is paid to those concepts that are essential for law enforcement practice. The constitutive signs of organizational responsibility, organizing contract and organizational obligation are

highlighted. On the basis of these features , a proprietary approach to qualification and application of organizational sanctions is proposed. The place of such a method of protecting civil rights as compensation for losses in the light of identifying organizational and property sanctions is determined. The legal nature of organizational and pre-contractual responsibility is investigated . The author's approach to determining the legal nature of each of these types of civil liability is presented. Attention is drawn to the non-identity of the concepts of "organizational responsibility" and "pre-contractual responsibility". At the same time, general features of these categories are highlighted. The problems of application of organizational sanctions (compulsion to commit an organizational action, compensation for losses, collection of a penalty) are considered in the light of the reform of civil legislation. Attention is focused on the problems of identifying and proving the grounds for the application of measures of organizational responsibility. The problems of compensation for damages within the framework of pre-contractual and organizational responsibility are investigated. Attention is drawn to the practical difficulties of proving the amount of real damage and lost profits for non-fulfillment of the organizing contract and violation of the organizational obligation.

Dmitry Bogdanov

COMPENSATION FOR LOSSES IN RUSSIAN AND FOREIGN LAW

No. 5, 2017

The process of reforming civil legislation continues in Russia. One of the notable trends in this process was the active use of foreign experience, which manifested itself in the reception of many foreign institutions in the Civil Code of the Russian Federation.

With regard to the novel of Art. 406.1 of the Civil Code of the Russian Federation's position that it has repeatedly expressed aims at inclusion in the Russian law institution indemniti (indemnity). However, the category

of indemnity is a kind of "umbrella" that covers a wide range of relationships, since indemnity is the method through which the law distributes various losses. For example, an insurance contract in Anglo-Saxon literature is traditionally viewed as a contract, the essence of which is to provide " indemnity ".

The novel under consideration is devoted to the so-called contractual indemnity , aimed at accepting the risk of property losses by the debtor that are not related to the violation of their obligations. The scope of this article is not limited only to " guarantees" in relation to the actions of third parties, which indicates the influence of Anglo-Saxon law.

However, the developers of Art. 406.1 of the Civil Code of the Russian Federation, the agreement on compensation for losses of the sign of compensability was deprived , since the court cannot reduce the amount of compensation for losses, except in cases where it is proven that the party intentionally contributed to an increase in their size.

The legal position of the Supreme Court of the Russian Federation returns agreements on compensation for losses in the framework of the "concept of exact protection" (exact protection), which corresponds to the compensatory and restorative function of civil rights. The Supreme Court has also demonstrated a “covert” application of the contra proferentem rule with regard to the interpretation of indemnity agreements.

The article substantiates the conclusion that when interpreting and assessing clauses on compensation for losses, it is necessary to be guided by the standards of conscientious and reasonable behavior of counterparties, to check such contractual conditions for their compliance with the criteria of fairness, taking into account the actual ratio of the negotiating capabilities of counterparties.

As a result of the study, it can be argued that indemnity is a method of distributing property losses, a manifestation of the compensatory and distributive function of civil law. Only the issue of agreements aimed at compensation for property losses can be considered as a separate legal institution.

Vasilevskaya Lyudmila Yurievna

COMPENSATION FOR LOSSES UNDER RUSSIAN AND PRECEDENTAL LAW

No. 5, 2017

As a result of the reform of the law of obligations in Ch. 25 of the Civil Code "Responsibility for violation of obligations", a new Institute indemniti (indemnity) in Art. 406.1, long known in the Anglo-Saxon legal system.

The article examines the construction of indemnity primarily on the example of classical English case law. This contractual construction is compared to the indemnity model enshrined in Art. 406.1 of the Civil Code of the Russian Federation. Comparative legal analysis made it possible for the author to highlight a number of significant differences in the establishment of rules on indemnity in Russian and English law, as well as to draw certain conclusions that, in the author's opinion, are of fundamental importance in assessing the institution in question.

First, the different interpretation of this phenomenon, which is complex and alien to our legal system, clearly indicates that the institution of indemnity , developed in the judicial practice of case-law states, based on terminology and a conceptual apparatus alien to our legal order, cannot be adopted without costs . Russian civil law.

Secondly, introducing norms on compensation for losses into the Civil Code of the Russian Federation, we, in essence, have a completely new approach to some cardinal positions and to the foundations of our civil law. The Russian law of obligations has traditionally been built and is being built on the separation and addition of such concepts as "responsibility" and "risk". In Art. 406.1 of the Civil Code of the Russian Federation, an institution appears where one party to the contract , despite the proper performance of the obligation, assumes a compensated risk for those consequences that are not associated with

its innocent actions. Obviously, an institution similar to the institution of insurance appears.

Thirdly, it should be borne in mind that the jurisprudence in the countries of case law has gradually introduced new rules, including the rules on indemnity , to regulate relations in civil circulation. Over the years, by trial and error, a fairly perfect mechanism for compensation for losses has been developed, which provides for a balance of interests of the parties to the contract. The introduction of similar rules into the law presupposes serious preparatory work, first of all, the "docking" of the new norms with other norms of the law, which in relation to the Civil Code of the Russian Federation was not done by our legislator.

Tyagay Ekaterina Davidovna

FEATURES OF PROTECTION AND MEASURES OF LEGAL RESPONSIBILITY FOR VIOLATION OF THE RIGHTS OF PROPERTY OWNERS IN THE USA

No. 5, 2017

The article analyzes the specifics of protection, as well as the grounds and procedure for applying legal liability measures for violation of the rights of owners of real estate in the United States.

Mechanisms for preventing offenses and ways to ensure the interests of owners are considered in the context of the peculiarities of the American system of complex structural models of property rights.

Special attention is paid to the key concepts underlying the regulation of property relations in the United States: Posner's economic theory of property, Hochfeld's theory of basic legal ties , as well as the theory of a "bundle of twigs" that allows the splitting of property rights into a potentially infinite number of powers, violation of each of which entails application of specific measures of responsibility.

The emphasis is made on the fact that the measures of responsibility for violation of the rights of property owners are determined taking into account two main factors: the form of the violation and the applicable method of protection.

Investigated Misdemeanor -pravovye design a nuisance (creating inconvenience for the owner of the real estate) and trespass (the invasion of the property boundaries), by which the user protected and possessory right of ownership. There is a tendency to blur the boundaries between these types of tort, which makes it difficult to apply adequate liability measures.

The key requirements for the maintenance of real estate and the objects located on it are outlined in order to prevent possible violations of rights.

There are disclosed cases of exemption from liability for violation of the ownership rights of the owner, when the invasion of the boundaries of the real estate object cannot be qualified as arbitrary.

The means of protection provided in accordance with the rules on the protection of property, on the application of responsibility and on the recognition of the inalienability of rights are studied .

Provides examples of the implications of nuisance and trespass lawsuits requiring injunctive relief, damages, and inalienability . The possibility of self-elimination of the offender from the boundaries of the property is considered as a way to protect ownership rights.

In the context of the problems under study, procedural and procedural issues are raised, including the course of the statute of limitations.