

**Abstracts of Materials Related to Art. 65
of the University Rules for Academic Career (PRASPU)
and Self-Assessment of Contributions**

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related to the competition for the academic position of associate professor

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1. Abstract of the monograph *Deceit as a Ground for Nullification of Contracts*, S.:Sibi. 2019, 224 p., In Bulgarian [Шопов, А. Унищожаемост на договорите поради измама. С.: Сиби]. ISBN: 978-619-226-138-2

This book represents a legal study on the concept of deceit in Bulgarian civil law. Deceit is a widely spread legal institution among national legislations of continental legal family. This taken into account, the author has done a thorough comparative research combined with the analysis of national legislation and case law. The most important Bulgarian legal regulation of deceit as a ground for contracts' nullification is Art. 29, Para 1 and 2 of the Obligations and Contracts Act (OCA). Literally, it is similar to § 123 of the *Bürgerliches Gesetzbuch (BGB)* which provides for the regulation of *Arglistige Täuschung*. Structurally, Art. 29 OCA is based on the model of Art. 1439 of the *Codice civile italiano*. In addition, Bulgarian legislator follows the approaches of the Italian and French civil codes.

Starting point of the study is the presentation of the place of deceit among the vices of will. They represent different factors defined by the legislator (*numerus clausus*) which exist at the time of the conclusion of a specific contract. As they vitiate the will, the contract has not been adequately formed but remains legally relevant. Every vice of will is a legal ground for contracts' nullification *ex tunc* depending on the decision of the person who expressed a vitiated will.

A classical view referred to specialized literature states the Janus face of deceit. This vice of will encompasses both: a) the mistake, other similar vice of will, existing in the mind of the deceived contracting party, and b) a particular misbehavior of the deceiving party, who infringes good faith in precontractual relations. As the former is linked with the nullification of contracts, the latter stays close to liability issues.

Historical research demonstrates that Roman jurists perceive these both sides of deceit but stress much more on its second feature - a particular act in bad faith/tort. The concept of the first feature of deceit has been developed in Medieval ages in France. Then, the *Code civil français* followed this approach and definitely placed the deceit among the vices of will. As it is well known, classical vitiating contract factors are mistake, deceit and duress. In addition, other contemporary features of deceit have been formulated by the theories of Pandect law. The provisions of BGB follow, to some extent, these achievements.

The next book chapters discuss two key issues: legal requirements for relevance of deceit as a vice of will and some particular cases of deceit. Under Bulgarian civil law deceit is relevant if:

- a) the deceiving contracting party (in rare cases - a third party to the contract, see Art. 29, Para 2 OCA) intentionally deludes its contracting party;
- b) creating a misbelief in its contract partner's mind, and
- c) this misbelief causes the deceived party's consent.

The author scrutinizes the content of these legal requirements. For instance, in requirement a) he studies the connection between the precontractual intentional unfairness (including the duty of disclosure) and the intention to deceive. Under Bulgarian law the precontractual liability has a special regulation in Art. 12 OCA, other than the regulation of the contractual and tort liability.

As far as requirement b) is concerned, the author for instance applies the Roman principle of *Fraus omnia corrumpit* comparing the field of relevance of mistake and this of deceit. The latter has broader field than the former.

The meaning of the *condicio sine qua non* principle and other problems of causation were discussed in the third legal prerequisite of deceit. Here the author explores the issues of partial nullification, practical usefulness in Bulgarian law of the difference between *dolus causam dans* and *dolus incidens*, etc.

The last chapter is dedicated to two particular cases. The first is the deceit caused by a third party to the contract (i.e. a person other than the other contracting party). Secondly, the deceit and the criminal offence of fraud were compared as they both are based on similar intentional misbehaviors.

2. Abstracts of Scientific Articles and Studies

2.1. Shopov, A. Judicial and Arbitration Practice On the Contracts' Avoidance, Caused by Deceit. Pravna misal, 2004, No 2, pp. 101-110. [Унищожаемостта на

договорите поради измама в по-новата съдебна и арбитражна практика. Правна мисъл, 2004, № 2] ISSN 1310-7348

The author observes judicial and arbitration decisions applying the article 29 of the Bulgarian Law of Obligations and Contracts. He comments only published decisions last thirteen years.

The goal of this article is to connect the practical approach with the theoretical achievements on this problem. Thus the author, giving arguments which are based on the Civil-law theory, approves and criticises some decisions' statements.

2.2. Shopov, A. Notes about Two Questions, Which Are Observed by the Latest Judicial Practice, On the Border of Deceit and of Criminal Fraud. – In: Bourgas Free University. International Academic Conference. Collection of Scientific Works. Vol. 3. 11th - 13th June 2004. Bourgas. 2004, pp. 112 – 116. [Бележки по два гранични въпроса за гражданската измама и наказателната измама, засегнати от по-новата съдебна практика – В: Бургаски свободен университет. Международна конференция „Предизвикателства пред образованието и науката в контекста на глобализацията”. Сборник доклади. Том Трети. 11-13 юни 2004 г. Бургас] ISBN 954-9370-14-3

The research deals on some aspects of the fields of application of deceit and of the criminal fraud. It is known that deceit and criminal fraud are different legal phenomena but also they have points of contact. Two of these points, which are observed in judicial practice, are analyzed by the author.

Key words: law, questions on the border, deceit, criminal fraud, judicial practice

2.3. Dolus and Deceit in Contracts' Formation. – In: 100 years from the birth of prof. Mihail Andreev. Sbornik statii. Sofiya. 2011, p. 542 – 550. [*Dolus* и измама при сключване на договорите. – В: 100 години от рождението на проф. Михаил Андреев. Сборник статии. С. 2011] ISBN 9789540732756

The article compares Roman notions of *dolus*, on the one hand, and the contemporary notion of deceit as a ground for nullification of contracts. The historical analysis allows us to discover the genesis of deceit as a vice of will. The latter was not known by the Roman jurists, but they treated deceptive actions as contrary to good faith. Deceptive behavior could be attacked by various legal means because it is morally reprehensible today and in the antiquity.

Roman lawyers did not make a definite distinction between the deceit in contracts' formation and the particular intention as a prerequisite of the liability for breach of contract. They call these phenomena equally as *dolus*. This is the genesis of the well known contemporary idea of two-faced nature (Janus face) of deceit.

2.4. The Crime "Fraud" and the Deceit in Contracts' Formation - A Comparison.

- **In:** Iybileen sbornik po sluchay 100-godishninata ot rozhdenieto na akad. Liuben Vasilev i prof. Zhivko Stalev i 90-godishninata ot rozhdenieto na prof. Vitali Tadzher. S. 2013, p. 360-396. [Наказателна и гражданска измама. – В: Развитие на правото в глобализация се свят. Юбилеен сборник по случай по случай 100 – годишнината от рождението на acad. Любен Василев и проф. дюн Живко Сталев и 90 – годишнината от рождението на проф. дюн Витали Таджер. Съставители Екатерина Матеева и Николай Колев. С., Феня, 2013] ISBN 9786191630172

The study compares these two legal phenomena, motivating the conclusion that they have different legal requirements. The fraud and the deceit can sometimes coexist in legal reality, without being mutually exclusive.

Based on the criminal and civil practice, the author analyzes details of the difference and common features of the fields of application of the fraud and of the deceit.

2.5. Abstract of the article "On the Legal Requirements of Deceit in Contract Formation" Студия юрис [Studia iuris], 2015, № 1, с. 1-10, <http://web.uniplovdiv.bg/paunov/Stidia%20Iuris/broi%201%20-%202015/Angel%20Shopov.pdf>, ISSN 2367-5314

The article analyses the approaches of regulation towards the deceit in contract formation in main legal systems. The natural starting point focuses on the legal requirements of deceit in Bulgarian law according to Art. 29 of the Law on Obligations and Contracts (LOC). The review continues with the main models of continental law - French, German and Italian. These legal approaches are considered in comparison with the approach of the Bulgarian legislator and doctrine. Two essential features should be noted here. Firstly, the legal requirements of deceit are the same in continental legal systems. Secondly, this vice of will combines legal facts (psychological and material) that "reflect" opposing views and interests. These facts must be present in the contract parties - the deceived and the deceiver.

The approach of continental legal systems is compared with the solutions of the more important sources of soft law and that of the Common law system. The regulation of soft law

is much more detailed than the provision of Art. 29 LOC. The Common law's approach is quite different. There, the notion of fraudulent misrepresentation has been developed within the institute of misrepresentation, which has a wider scope of application than this of deceit.

2.6. Deceit by Third Party in Contract Formation. [Договаряне чрез измама от трети лица. - В: Право и права. Сборник в памет на проф. Р. Ташев. С., 2016, УИ, с. 462-477], ISBN 978-954-07-4173-4

Main conclusion of this article is the changing point in relation to the relevance of deceit by third parties different from the contract partners. According to the classical view, the deceit by third parties is classified as a major exception to the principle of the relevance of deceit.

However, there are too many hypotheses when its author is not *de facto* a contract party of the deceived person. Even in legal systems which accept the classical principle of the relevance of deceit, many exceptions of it are allowed.

2.7. *Dolus bonus* in Roman and Contemporary Law [*Dolus bonus* в римското и съвременното право, Юс романум (Ius romanum), 2016, № 1, с. 285-295, <http://iusromanum.eu/documents/> or <http://iusromanum.eu/i/2016-commercium>], ISSN 2367-7007

This research paper scrutinizes the notion of *dolus bonus* at the time of Ancient Rome compared to its nowadays' meaning. In addition, the author analyses the ratio between *dolus bonus* and *dolus malus* and their importance on the notion of *dolus*.

In contemporary law the problem is often discussed in connection with the deceit as the reason for nullification of contracts. The author sketches the borderline between good intention (*dolus bonus*) and bad intention/faith (one of deceit's prerequisites). The paper considers other contemporary (Bulgarian, but having EU origin) legislation which puts indirect limitations on good intention, too. Under this legislation *dolus bonus* should not create any probability on misbelief (as a deceit's prerequisite) or on (material/non material) loss by the addressee.

Keywords:

dolus bonus; *dolus*; deceit; nullification of contract; good intention; commercial puffs; advertising; consumer; (unfair) competition

2.8. Contracts' Formation through Deceitful Omission [Договаряне чрез измамливо бездействие. - В: Soft law и съвременното право, С. Сиби, 2017, с. 84-117. ISBN 978-619-226-005-7

The principal Bulgarian legislation on deceit (among the other vices of will) is the Art. 29 Obligations and Contracts Act. Literally understood, this vice of will should be effectuated only by active misconduct by the deceiving contract party. The doctrine, however, does not dispute the fact that not only active but also passive behaviour could be deceiving in contracts' formation.

The analysis examines: a) the legal prerequisites under some national (Bulgarian and some other states') legislations and soft law regulations (mainly the UNIDROIT Principles; Principles of European Contract Law; Draft Common Frame of Reference) about passive misleading behaviour; b) the opinions of legal doctrine and c) case-law about the deceitful omission.

**Self-assessment of contributions of the above mentioned works
of Angel Shopov, PhD**

The monograph represents the first deep legal study on the concept of deceit in Bulgarian civil law. It analyses three main issues - the concept of deceit, its legal prerequisites as a vice of will and particular kinds of deceiving behavior. Different aspects from these issues were scrutinized in articles and studies pointed out above.

Main contributions of reviewed works in this competition:

1.1. The author discusses legal requirements for relevance of deceit as a vice of will and some particular cases of deceit. These legal requirements for the relevance of deceit were pointed out through national and comparative research. Thus, under Bulgarian civil law deceit is relevant if:

- a) the deceiving contracting party (in rare cases - a third party to the contract, see Art. 29, Para 2 OCA) intentionally deludes its contracting party;
- b) creating a misbelief in its contract partner's mind, and
- c) this misbelief causes the deceived party's consent.

1.2. The author scrutinizes the content of these legal requirements.

1.3. The author makes an additional argumentation on the Janus face of deceit in the field of law. Some main particular kinds of deceit were analyzed in depth. For instance, the

comparison of criminal fraud and of deceit; the deceit by omission; the practical usefulness in Bulgarian law of the difference between *dolus causam dans* and *dolus incidens*, etc. The author motivates amendments *de lege ferenda* on the regulation of deceit by third, non contract, party.

1.4. The analysis takes into account the similarity (but not the uniformity) between deceit and mistake as different vices of will. Deceit depends on particular misbehavior of the deceiving party, who infringes good faith in precontractual relations;

- the analysis takes into account that deceiving misbehaviour is linked to liability issues.