
SUMMARY

The factoring agreement being an example of an empirical development of mutual obligations does not lend itself to a cut-and-dry classification under Polish civil law, nor under a majority of foreign legal systems. The prevailing view in Polish law theory is that factoring should be regarded as an innominate agreement, an innominate agreement featuring elements of a nominate-innominate agreement, or just a mixed nominate-innominate agreement. Factoring is often thought of as a group of agreements (sale agreement, loan agreement), functionally connected but legally independent, which includes an assignment of claims along with other nominate and innominate agreements which regulate a host of other services the factor provides for the seller (e.g., service agreement). Lastly, factoring agreements are regarded as independent nominate agreements (e.g., sale, loan or service agreements).

As the problem of legal classification of the factoring agreement has never been dealt with at any depth in domestic literature, with only scant reference to it in legal theory and commentaries, I have sought to analyse the legal classification of the factoring agreement in Polish law as the main aim of this paper. My guiding objective first and foremost has been to conduct a formal analysis of the legal construction of the factoring agreement in keeping with the law of 23 April 1964, the Civil Code, which in view of its wider research interest had to be supported by arguments of legal comparative nature.

Correct classification of the factoring agreement is highly desirable from both a theoretical and practical point of view, as it would help determine the legal regime applicable to factoring. The answer to the question of whether factoring is an entirely independent legal mechanism or merely a type of one of the nominate agreements (here, a special type of sale agreement with non-typical incidental duties imposed on the factor) does affect our reasoning process in recommending and evaluating potential legal solutions and provisions of law which apply to e.g. assignment of accounts receivable as part of the factoring transactions. Considerable uncertainty in classification of the civil law factoring agreement undermines trust in the operation of the law and affects the security of receivable financing.