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Money in Civil Law Relations: Legal Nature, Status, And Regulatory Framework

Opayev Asan Aymanovich
Independent researcher of the Tashkent state university of law, Uzbekistan

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Abstract

This article delves into the multifaceted role of money within civil law contexts. It examines the legal characteristics of money, its status as a medium of exchange, and its implications in various civil law transactions. The author provides a comprehensive analysis of the regulatory frameworks that govern monetary transactions, exploring how these laws shape the interactions between parties in civil relations. By addressing both theoretical and practical aspects, the article offers valuable insights into the significance of money in legal agreements, dispute resolution, and economic activities. It also discusses contemporary challenges and potential reforms to enhance the effectiveness of monetary regulations in civil law.

Keywords: Money, civil law, regulatory framework, monetary transactions, civil relations, medium of exchange, legal characteristics, dispute resolution, economic activities.

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1. Introduction

Money as an object of civil law comes in two forms: cash and non-cash (including electronic and cryptocurrency). Below, we will discuss the legal nature, specifics, and legal concept of money as a civil object. It can be said that the concept of money in civil law is not fully understood and lacks a clear legal definition.

By its economic nature and functions, money can have the qualities of a means of payment, a store of value, and a means of measuring value. This implies not only economic (key) factors but also the influence of state monetary policy. Each state creates its own currency primarily to ensure the stability of commodity-money circulation. Only then will money serve as an indicator of the value of the property of entities and the settlements between them.

The essence of money in terms of its legal content and functions is also much more complex and requires research. For example, Article 81 of the Civil Code (CC) of the Republic of Uzbekistan includes money in the list of things. Here, we believe the legislator intended cash, since non-cash money cannot be considered a thing due to its intangible nature [1].

In general, neither Uzbekistan nor Russia has a unified opinion on the concept of money in civil law. Legal literature contains a variety of opinions on the nature of money. We will begin the discussion with a number of scholars who propose a distinction between cash and non-cash money.

There are two types of money as objects of civil law: cash and non-cash (including electronic and cryptocurrency). Below, we will discuss the legal nature of money as an object of civil law, its characteristics, and the legal concept of money. It can be said that the concept of money in civil law is not fully understood and lacks a clear legal definition.

According to its economic essence and functions, money, in addition to being a medium of exchange, can also possess the qualities of a means of payment, a store of value, and a means of measuring value. This implies not only economic (fundamental) factors but also the influence of a state's monetary policy. Each state, to ensure the stability of commodity-money circulation, first and foremost creates its own monetary unit. Only then does money serve as an indicator determining the value of the property of entities and the transactions between them.

According to a group of scholars, including E.A. Sukhanov, L.A. Novoselov, V.S. Shishkina, and R.Z. Zagirov, non-cash money (money in non-cash form in a bank account or other venue) is not an object of property law and is an object of the law of obligations. Non-cash funds, although recognized as property in the broadest sense of the word, do not imply ownership rights. [2] Cash, on the other hand, is a thing, and the provisions of property law apply to it.

L.G. Efimova and O.M. Oleynik and K. Trofimov recognize non-cash money as an object of property rights [3]. One important point should be noted in their conclusions regarding cash: a banknote or coin may be an object, but the value of money—a right—is not a thing. Let us now analyze the substantive rights in relation to cash in terms of their traditional elements (ownership, use, disposal).

Cash can be owned as a thing. However, in a number of ways, it differs from other things. For example, upon transfer of a banknote, the right of ownership ceases, leaving only the right of obligation (the bank's claim). Also, if the right of ownership to banknotes is violated, for example, if they are confiscated by another person, a claim for vindication against the money cannot be initiated (except in exceptional cases where the banknotes are numbered, such as numismatics).

The next element of property rights is the use of funds through transfer to bank accounts or cash payment. Researchers pay particular attention to the use of funds raised by banks. Banks, however, temporarily use money and derive commercial profit from it (through lending). [4] The fundamental economic essence of money is expressed in its exchange. This is done in the form of a civil-law disposition. At the same time, legal literature asserts that money is not only an object by its legal nature but also presupposes, in addition to its form, an ascribed value, and viewing it as an object by this property is incorrect. [5]

Thus, the legal characterization of cash can be expressed as follows: cash is an object of civil rights with a special legal regime in the form of banknotes and coins (things) with a nominal value.

The civil-law nature of non-cash money is also complex and contradictory. Since it has no tangible form, most scholars believe that non-cash money is understood as a type of obligatory right in civil legal relations, i.e., a right of claim. The issue of electronic and cryptocurrency in particular is debatable, although their civil law nature is the same as that of non-cash money. There are two main approaches to describing the legal nature of non-cash money, stemming from its economic nature: 1) cash is a type of obligation arising in connection with the provision of non-cash value, 2) cash is a type of obligation or property right arising with the participation of a third-party bank (the right of claim) [6].

Neither the Civil Code of the Republic of Uzbekistan (Part Three, Article 94) nor the Law of the Republic of Uzbekistan "On Payments and Payment Systems" distinguishes between cash and non-cash money. The legislator does not use the term "non-cash money," instead using the term "cashless settlement." This, in our opinion, further confirms that money does not possess the aforementioned civil-law duality, and that cash and non-cash money, although of different natures, all perform the functions of money. Money is not created, like other objects of civil law; it is merely circulated by the state, which applies both to cash as a thing and to non-cash money as a legal entity. The issuing state has no substantive right to cash; its powers are aimed at establishing and maintaining a monetary regime on a public-law basis. From the above, we can conclude that money is understood as a property right (a right of claim) in its civil law nature: 1) monetary assets are objects of civil rights in the form of banknotes and coins (things) with a nominal value; 2) non-cash money is a property right as a right to money or a right of claim. Cash and non-cash money merely change their legal status in form, but essentially perform the same function.

The meanings of money and currency largely overlap. The following six propositions explain the conceptual meaning of the terms "money," "currency," and "legal tender" and the relationships between them.

Proposition 1: All money is a form of property. If a thing is not property by virtue of its characteristics or under the provisions of law, it cannot be money. However, not all property is money.

Proposition 2: Since currency and legal tender are examples of money, they must also be property. If a thing meets the meaning of currency or legal tender, then it is both money and property. Therefore, if LTT is currency or legal tender, it must also be money.

Proposition 3: Money need not be the legal tender of any nation [7]. Historical case law reflects the acceptance of the "Societarian Theory," which holds that widespread community acceptance determines when an object equals money. Conversely, the "state theory" presented by Georg Knapp views money as a thing that can only be created by the state. Provided that a thing performs the function of money and meets the definition given by law, that thing will be money in the broadest sense of the term. This is true even if the thing has no tangible form. The "function of money" refers to money's ability to act as: (a) a measure of value or unit of account, (b) a means of payment, (c) a medium of exchange, and (d) a store of value [8].

Proposition 4: Money exists in two forms: circulating money and non-circulating money. This distinction is relevant when considering whether a restitution claim for money will be successful. For example, as emphasized in Miller, when a thing that meets the broad definition of money is not transferred as circulating money (i.e., it passes as a medal or an antique), it may be recovered under a common law claim.

Statement 5: Currency, or current money, circulates as money denominated in a unit of account. Similarly, currency need not be legal tender in any country; however, the legislature may limit the meaning of currency in its legislation. If currency truly had a meaning similar to legal tender, the legislature would have difficulty regulating and controlling money other than the country's legal tender.

Statement 6: Legal tender is the established national currency. It is typically created, issued, and regulated by legislation and a government agency, typically the central bank.

Unspent transaction outputs (UTOs) on most full nodes represent individual private interests. Following Statement 1 above, UTOs are not prima facie excluded from being money, currency, or legal tender.

Money as a unit of account refers to a "numerical measure of value" used to record income or wealth, as well as to determine the price of goods, services, or debts. The unit of account for UTOs is, for example, "bitcoin," but there is no distinguishable piece of data that identifies a specific "bitcoin" as a discrete digital "coin." This is because UTOs are encoded alphanumeric strings containing details such as output information, which specifies the "value" in bitcoins that must be associated with a specific public key. If the output information indicates that the UTO is attributed to a specific number of bitcoins, the measure of value of the UTO is the number of bitcoins.

Many national banks around the world acknowledge that some businesses accept Bitcoin, a form of decentralized money. The regulator notes that national currency (fiat money) is the primary method of determining the price of goods and services. For example, in Australia, decentralized money is not the primary unit of account for goods and services. The Reserve Bank of Australia [9] does not consider Bitcoin (decentralized electronic money) to have the key characteristics of money. However, such a strict interpretation that a thing is money only if it is the primary unit of account would mean that foreign currency is also not considered money. We disagree with this statement, as it contradicts Statement 3 ("Money need not be legal tender of any country"). Therefore, the NVT output (bitcoin value) is a unit of account, since Bitcoin is used to value goods, services, and debt.

Money as a means of payment refers to the ability of a thing to be accepted as a means of settling a debt denominated in that unit of account. Money as a means of exchange refers to an item that provides a “convenient substitute or method for facilitating the efficient exchange of goods and services” [10]. MT is intangible property, such as bank deposits denominated in hard currency, stocks, or debt. A person in control of MT can access, redeem, and use it for a variety of reasons, including paying for goods and services, settling monetary obligations, investing, or conducting business. Current legal doctrine does not indicate any requirement that a thing be used solely as a method of settling monetary obligations. Rather, the thing must be accepted only as a method of settling monetary obligations. Given that many transactions on the Bitcoin network are private, it is difficult to determine the extent to which MT is accepted as a means of payment. This is because the information recorded on each Bitcoin blockchain describes the time of the transaction, the sending Bitcoin address, the transaction value (in Bitcoin), and the receiving Bitcoin address. It does not record the purpose of the transaction. However, there are companies that have conducted quantitative and qualitative analysis of this information and matched the data with entities associated with specific Bitcoin addresses. For example, on March 30, 2020, Chainalysis published its analytics on the value of Bitcoin sent to merchant services between July 19, 2019, and March 19, 2020 [11]. The company obtains the information by applying clustering methods to a version of the Bitcoin blockchain and the information to identify behavioral patterns, types of users on the network, and other observable subgroups. “Clustering” is an established “multivariate statistical procedure” by which data sets are broken down and reorganized in such a way that classifications of highly similar entities can be created [12]. This procedure is fundamental to nearly every field of study. For example, in biology, the taxonomy of living things is based on observable differences and similarities, which lead to discrete groupings and provide insight into the potential evolutionary process of each group.

Chainalysis also suggests that "users are purchasing essential items through merchant services that they cannot obtain elsewhere with fiat currency" in the context of Covid-19. Business services such as web hosting, which typically have regular payment plans, are also widely available through merchant services – the costs of these services under previously concluded contracts may also support this category as a whole. Some authors emphasize that the rise of online markets and global business means that nationally issued currencies are less necessary for conducting this business. Bitcoin (a decentralized electronic currency) offers a cost-effective means of transacting across national borders, accessing capital, and escaping repressive financial regimes. Many Venezuelans are desperately adopting Bitcoin in their businesses to protect their savings after record-high inflation rates threaten to devalue their local currency, the bolivar [13]. Kevin Rand, a Forbes columnist, highlights how "cash-starved governments are taking notice" of Bitcoin and are taking steps to facilitate Bitcoin-related businesses. Coinbase [14], a well-known Bitcoin payment system, claims to serve over 8,000 merchants worldwide.

Based on transaction values, widespread adoption by payment systems, and integration with businesses worldwide, we conclude that NBT is a means of payment. Consequently, NBTs are also an efficient method of exchanging goods and services between individuals, similar to bills and notes.

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