

**„BABEȘ-BOLYAI” UNIVERSITY CLUJ-NAPOCA
FACULTY OF LAW**

UNILATERAL JURIDICAL ACT

- SUMMARY -

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CONTENTS

INTRODUCTION	8
TITLE I. ABOUT THE ORIGINS OF THE UNILATERAL JURIDICAL ACT.....	15
1. The concept of juridical act.....	15
1.1. Definitions	15
1.2. The will – fundamental element of the juridical act.....	17
1.3. The relationship between the will and the targeted legal effects	19
2. The delimitation between juridical act and juridical fact.....	21
2.1. The evolution of the classification of the sources of obligations	21
2.2. The role of will as a criterion for distinguishing between the juridical act and the juridical fact	24
2.2.1. Criteria of directed will.....	27
2.2.2. Criteria of necessary will	30
2.2.3. Is it a net distinction feasible?.....	32
2.2.4. Another vision.....	34
2.2.5. Examples.....	35
a) The engagement	36
b) The acts through which the possession is exercised.....	39
c) <i>Negotiorum gestio</i>	40
d) Payment	42
e) Consumer contracts.....	44
3. Testament - the archetype of the unilateral juridical act?	46
3.1. Terminology	46
3.2. The evolution of the perspective on the testament inheritance	47
3.2.1. The <i>mortis causa</i> act was initially unthinkable.....	48
3.2.2. The appearance of some wills.....	50
3.2.3. <i>Legatum</i> and <i>fideicomissa</i>	56
3.2.4. The testament - source of obligations?	58

3.2.5. The testament - expression of the parent's power over the family.....	59
3.3. The testament today	62
3.4. The testament - the archetype of the unilateral juridical act?.....	65
TITLE II. ABOUT COMMON LAW AND ITS VOLUNTARY	
SOURCES OF OBLIGATIONS	69
1. The contract from a comparative perspective.....	70
1.1. The importance of the intellectual foundation of the contract	70
1.2. The promise in common law	73
1.3. Consideration.....	76
1.3.1. Consideration versus causa	78
1.3.2. Gratuitous promises	79
1.3.3. Softening the force of Consideration	83
1.3.4. Theories of replacing Consideration.....	84
2. Unilateral juridical act.....	87
2.1. Continental law.....	87
2.2. Common law.....	90
3. Promise of reward	91
3.1. Unilateral conception.....	91
3.2. Contractual conception	94
TITLE III. ABOUT THE ADMINISTRATIVE ACT AND THE ACT	
OF THE ADMINISTRATION.....	99
1. Acts of power in Roman law.....	99
2. The delimitation of the administrative act by other legal figures .	104
2.1. The administrative act and the act of the administration.....	104
2.1.1. Notion	104
2.1.2. Analysis of certain types of administrative acts	107
a) The jurisdictional act and the administrative act of the court.....	107
b) The notarial act	129
c) Administrative acts containing civil rights	138
2.2. Administrative act and civil act.....	142
2.2.1. The situation of obligations	142

2.2.2. The situation of real rights	145
2.2.3. Acts of public power and acts of private power	147
a) Double legal personality	148
b) Public power and private power	149
c) The warrant	155
d) Administrative contracts.....	158
3. Administrative act - conditions of validity	162
3.1. Consent	164
3.2. Capacity	168
3.3. Form.....	169
4. Classifications of administrative act.....	172
4.1. Depending on the extent of the legal effects it produces	172
4.2. Depending on the number of wills that contribute to producing legal effects.....	173
4.3. Depending on the elaboration procedure.....	174
4.4. Depending on the author from whom the act emanates	175
5. Administrative act and civil act: misleading differences.....	176
5.1. Unilaterality of the administrative act	176
5.2. Obligativity of the administrative act	180
5.3. Enforceability <i>ex officio</i>	183
TITLE IV. ABOUT THE UNILATERAL JURIDICAL ACT IN ROMANIAN CIVIL LAW	190
1. The place of the unilateral juridical act in the legal area.....	190
1.1. General legal provisions	192
1.2. Classifications.....	194
1.2.1. Classification of unilateral acts according to the formality of communication as a condition of effectiveness	194
1.2.2. Classification of unilateral acts according to the need for acceptance as a condition of effectiveness	196
1.2.3. Classification of unilateral acts according to the ability to generate obligations.....	199

2. The unilateral act as a source of civil obligations	200
2.1. Civil obligation	200
2.2. Unilateral promise	202
2.2.1. Terminology	202
2.2.2. Sources of inspiration	202
2.2.3. Effects	204
2.2.4. Legal nature	205
2.3. Promise of reward.....	207
2.3.1. Preliminary issues	207
2.3.2. The scope pursued by the promisor	208
2.3.3. Delimitations.....	210
a) Delimitation from gambling and betting contracts	210
b) Delimitation from the proposal to indefinite persons.....	212
c) Delimitation of the promise of prize.....	213
d) Deceptive advertising announcements that promise awards	222
2.3.4. The mechanism of generating obligations	224
2.4. The offer	227
2.4.1. Theses on the legal qualification of the offer.....	228
2.4.2. Formation.....	231
2.4.3. Effects	232
a) The offer with a term	233
b) The offer without a term.....	235
2.4.4. Is the offer a source of obligation?	236
2.5. Promissory notes.....	238
2.5.1. General lines	238
a) Notions.....	238
b) Substantial relationships	240
2.5.2. The relationship between the form and effects	243
a) Formalism in Roman Law	243
b) Formalism today	245
c) The cambial document - substitute of the will?.....	246
d) The incorporation of the right into the title. Significance and distinction from possession of movable goods.....	249

2.5.3. The function of the formalism in the case of promissory notes.....	252
a) Distinction from Land Book formality	252
b) Abstract character	254
2.5.4. The relationships generated by the promissory notes	258
a) Autonomy translated by the birth of an original right	259
b) The effects of the promissory note	261
c) The effects of the bill of exchange.....	263
2.5.5. The mechanism of generating cambial relations	265
a) The promises included in the document	265
b) Unilateral engagement.....	269
2.6. The theory of unilateral engagement	270
2.6.1. The vision of German law.....	273
2.6.2. The vision of French law	274
2.6.3. The situation in Romanian law	276
2.7. The role of will in unilateral engagement.....	280
2.7.1. Autonomy of will and unilateral juridical act	280
2.7.2. Is the will sufficient?.....	283
3. Unilateral act and non-patrimonial rights.....	288
3.1. Rights that relate to person identification.....	289
3.1.1. The right to name. Declarations of name.....	289
a) Establishing the surname	290
b) Establishing the family name	292
c) Changing the name and / or surname by administrative means	293
d) The change of the name as an effect of other acts.....	293
3.1.2. The right to domicile. Declarations of domicile	295
3.2. Recognition of parentage.....	297
4. Unilateral act and potestative rights	299
4.1. Notion	299
4.2. Unilaterality of potestative rights	303
4.2.1. The relationship of subordination	303
4.2.2. Legal place of the passive subject.....	305
4.3. Limits of potestative rights	306
4.3.1. The alternative	306

4.3.2. Deadline	311
4.4. The act by which the potestative right is exercised.....	313
4.4.1. Effects	315
a) Influence of a legal situation.....	315
b) The birth of a binding obligation?	319
4.4.2. Features	320
a) The irrevocable character.....	321
b) The (non-)patrimonial character	321
c) Juridical act to be communicated.....	324
4.4.3. Controlling the exercise of potestative rights	325
a) Power specific to potestative rights	326
b) The incompatibility of the abuse of right with the nature of the potestative right.....	327
c) Situations that allow control	328
CONCLUSION	333
BIBLIOGRAPHY	343

KEYWORDS

Unilateral juridical act, will, declaration of will, juridical fact, source of obligations, testament, promise, contract, consideration, cause, voluntarism, promise of reward, administrative act, act of the administration, power, public power, private power, jurisdictional act, unilateral engagement, general theory of the unilateral juridical act, unilateral promise, offer, promissory notes, legal mechanism generating obligations, patrimonial imbalance, non-patrimonial rights, role of will in producing legal effects, potestative rights, eclecticism.

SUMMARY

Through this paper we have proposed to approach the unilateral civil juridical act and to determine whether it allows the construction of a general theory. Although it is legally recognized and is frequently used in practice, the unilateral civil juridical act is not a common topic in the legal doctrine. It is generally known and treated by his species, although at the conceptual level it is presented as a legal category opposed to the contract. Our aim was to include in the analysis both juridical acts through which patrimonial rights are exercised, as well as those found in extra-patrimonial matters. We have thus directed our efforts in two directions: on the one hand, to determine whether the unilateral act constitutes a general source of civil obligations and, on the other hand, whether it is possible to construct a general theory of unilateral juridical act in civil law.

Given that the analysis of these themes necessarily involves the discussion of some tangential subjects, I have structured this thesis into **four titles**. **The first one** was dedicated to the origins of the unilateral juridical act and the main concern was to determine whether the will (testament) is the archetype of the unilateral civil juridical act. To this end, we felt it was necessary to first determine the contours of the concept of juridical act, presenting some definitions given by the doctrine and referring to the central element of the juridical act, namely the will. We also presented the relationship between the will and the targeted legal effects and then we tried to make a distinction between the notions of juridical act and juridical fact. At the theoretical level, both the juridical act and the juridical fact are concepts whose definition has given rise to wide controversy along the evolution of the legal doctrine, the efforts being channeled towards identifying a criterion on which to distinguish between them. So we have found it useful to mention the criteria proposed by the doctrine to find out whether we can show preference to one of them.

After clarifying these issues, we reviewed the evolution of the perspective of the testamentary heritage, starting with the vision of the old Roman law and finalizing with the way the testament is looked upon today. We have found that in the Roman law the will was not included in the category of legal acts. For the Romans it was nothing more than a confessed state of fact, his central element being the establishment of heirs. The testament was a figure that could not be legally treated like the mechanisms that were

included in the category of subjective rights sources. The theory of the sources of obligations had as its starting point the regulation of trade, trying to translate certain situations of social life into conceptual models, and the testament was not related to these aspects. For this reason, it has never been mentioned as a source of obligations.

Observing that nowadays the testament is often considered a source of obligations, we have tried to determine the mechanism by which it produces legal effects. The goal was to determine whether this mechanism identifies itself with the classical procedure for generating voluntary legal effects. The fact that in this case the unilateral will is not self sufficient, but needs a legal perimeter to transform itself into a legal act, has led us to a negative answer. In the case of the testament, this context is outlined by several conditions: the legal provision, the death of the testator, the assets in his patrimony, the acceptance of the legatee. We have thus shown that the source of the obligations included in the testament does not identify with any of these elements, but with the situation resulting from their cumulation.

Under the **second title**, we have paid attention to the view promoted by a law system based on diametrically opposed principles to those common to us, namely common law. Thus, we have carried out a comparative analysis of the voluntary sources of obligations, first addressing the contract, the typical juridical act. Looking further at the unilateral juridical act, we have shown that the Anglo-Saxon law is not concerned with the conceptual approach of this act, which is not regarded as a general source of obligations.

The discussion in common law focuses around the notion of promise, being relevant the conditions under which it may become binding. The way in which juridical acts are formed has no influence on the nature of the obligation. As such, the contract is defined by the promise, this last having a different meaning from what civil law systems know. Similarly, certain acts which in the continental law would be considered unilateral are assimilated into common law with contracts, thus being recognized as being capable of generating obligations. All obligations derived from voluntary sources have a contractual nature.

To illustrate the conceptual distance between the two legal systems, we looked at a particular example, the promise of reward. According to Anglo-Saxon law, this act is considered a contract, alongside other situations that continental law excludes from the group of bilateral acts. On the contrary, in the pattern of continental law, the claim that a

mere promise has the capacity to give rise to a contract in the absence of acceptance and even of knowledge is absurd. This is, in principle, the follower of the unilateral concept, promoting the mechanism of unilateral engagement to meet the practical challenges generated by the promise of reward.

The effort of our research was further focused on the determination of the common elements of the unilateral administrative and civil juridical acts, the central point of the discussion being the notion of power. We therefore analyzed in **the third title** of the thesis the correlation between the administrative and civil juridical act, making the essential distinction between the administrative act and the act of the administration. What led us to such an analysis was the fact that, for the unilateral juridical act, contrary to the contract, a general aptitude is not sufficient, being necessary a special one that we can find in the power of issuing act. Thus, even if at first sight the power is specific to the public law, being distinctive to the subordinate relations of those involved, we have seen that in reality the notion is also found in private law.

We intended to capture aspects of the dual legal personality of administrative authorities and tried to understand the notions of public power and private power, while also providing some examples. Highlighting some acts that we considered to have administrative nature, we have found that the distinction of the administrative act from other acts issued under the regime of public power can not have as a starting point the quality of the subject of the law issuing the will. The criterion that we need to report for a correct delimitation is subsumed to the form of activity that is accomplished through the act.

Although the authorities empowered with the power to unilaterally issue binding and enforceable administrative acts are administrative, we have shown that they are not the only organs that have the prerogative of issuing such acts. Public power is not an exclusive attribute of the administration, but is specific to all public authorities in the sphere of the three state powers. So, given the many legal subjects that can issue administrative acts, we have highlighted that syntagms of administrative acts and acts of the administration are not synonymous, the latter being included in the wider set of the first.

Outlining the correlation between the administrative act and the civil act implied, in addition to suggesting a definition of the administrative act, the analysis of its validity conditions and specific features. Our goal was to find the meeting points of the two

subjects and to find out if the differences between the two types of acts justify the abyss created between them or if they are only deceptive. The similarities we have identified with regard to the features of the act have shown us that there can be no support for the existence of a so deep gap between the two legal figures analyzed.

In **the fourth title** of our study we analyzed the unilateral juridical act in Romanian civil law, the research being carried out on two levels. Starting from the regulations in force, we first referred to the unilateral acts that arrogate their ability to generate legal obligations, these being the basis of the discussion of unilateral engagement. To this end, it was necessary to treat the two explicit legal figures provided by the law as a unilateral act as a source of obligations, namely the unilateral promise and the promise of reward. This context also appealed the approach of some applications, such as the offer and the promissory notes.

We appreciated the need to review the theories advanced by the two major systems of continental law (German and French) regarding the unilateral engagement, so that in the end we can capture the situation in Romanian law. We have seen that the interrogation on the potential of the unilateral engagement to generate obligations has received the most varied responses. All of these debates helped us understand the issue of the existence and definition of unilateral engagement and allowed us to provide a response to the dilemma of the ability of the unilateral juridical act to constitute a general source of obligations. In this context, we could not ignore the role that the will plays in producing legal effects. We have shown that unilateral will is not capable of producing binding effects at any time and in any context, which is not, however, capable of denying the existence of unilateral engagement. It exists, but its approach must be taken from another perspective.

On the other side of the discussion were the unilateral acts that represent a way of exercising the prerogatives of the author of the will on which he can freely dispose. These acts formed the basis of the discussion on acts of non-patrimonial rights and potestative rights. Their analysis was indispensable for our approach to determine whether common elements of unilateral juridical acts are sufficient to build a general theory. In extra-patrimonial matters, based on practical examples, we have tried to identify not only the role that the will plays in producing legal effects, but also the possibility of releasing elements of generality.

We have found that unilateral acts issued in this field are similar to administrative acts from the point of view of their formation. The fact that the requirements of the law and the strict procedures to be followed in order to complete the act differs fundamentally according to the right to which it refers revealed that, although the act remains unilateral, it varies all the time. The common element is the unilateral manifestation of will on the part of a person, but otherwise, the conditions and content of the act differ from case to case. We considered that this is a proof of the fact that eclecticism in this field does not allow the discovery of a common core.

Regarding the acts through which potestative rights are exercised, our aim was to determine whether the specific heterogeneity of this matter impedes or not the establishment of a set of rules invariably applicable to all of them. We have seen that their legal status can not be established precisely. Thus, even if we have succeeded in concealing certain elements belonging to all the legal acts by which potestative rights are exercised, it is impossible to determine on their basis a set of rules governing the whole category of these acts. We have therefore noticed that the acts through which potestative rights are exercised are not a homogeneous legal species.

We concluded that the impression that regarding to legal acts there is a common trunk and two branches is false. In fact, any legal will that is not susceptible to having the value of a contract is cast as a unilateral juridical act. However, given that the law does not grant such a will the power to generate obligations, it is inappropriate to analyze the unilateral act in contrast to the contract. In addition, the unilateral act lives only through its species and is thus a residual and eclectic notion. The only common element of all unilateral legal acts is the unilateral manifestation of will. Otherwise, the conditions, the formation mechanism and the effects vary from one situation to another, making it impossible to detect a common core. These issues have led us to conclude that it is not possible to build a general theory of unilateral legal act.