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PURPOSES AND INTENTIONS OF BUSINESS ENTITIES  
IN THE CIVIL-LAW RELATIONS SYSTEM

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*Abstract.*

**Introduction:** Two subjective elements of legal relations are analyzed in the article: purposes and intentions of the parties and their value in different legal systems, questions about the ways of estimation of intention of the parties applied in the system of common law depending on the type of legal relations are considered. The question of the legal nature of the purpose in the civil turnover of the Russian Federation and the influence of the tax doctrine "business purpose" on the qualification of entrepreneurial activity is also studied. **Research objective:** to identify the significance of subjective elements of the transaction in different legal systems, to determine the impact of the purpose of the transaction on the qualification of legal communication and the consequences of the non-conformity of the purpose of the transaction with the intentions of the parties. **Methods:** empirical methods of comparison, interpretation as general scientific methods of cognition, descriptions were also used in private scientific methods: comparative legal and system analysis methods. **Results:** An analysis of the various legal approaches shows that legal systems based on formalism leave the intention and goals of subjects beyond the legal qualification, since the main confirmation of the will of the parties is a written contract. However, an obvious reluctance to assess subjective elements in civil law disappears when assessing the behavior of subjects for tax regulation purposes. And in this vein, the goals of the participants are subjected to excessively close scrutiny. **Conclusions.** One of the basic differences in legal systems is the approach of the judiciary in attempting to assess both the will of parties to civil law relations and its implementation, depending on it, the

law and order has a set of mechanisms to enable such assessment. The common law system, built on the freedom of contract, allows parties to choose both the form of recording their legal relations and their content. Because of the wide dissemination of the oral form of the contract, the courts have established mechanisms and ways to assess the intentions and objectives of the parties, and in all cases the intentions and objectives are legal fact. Whereas in the continental legal system, the purpose is a determinant condition for a certain kind of legal consequences, but not for the emergence of legal relations in general.

Research and analysis of subjective components of legal relations has always been a priority in criminal and administrative law, where the subjective factor in the form of guilt, one of the basic elements of the offense, without the evaluation of which it is impossible to properly qualify what has been done. Taking advantage of the provisions of criminal law, guilt should be defined as a person's attitude to his actions and their consequences. In the analysis of civil law obligations, the subject's attitude to his actions does not play a primary role, except for the cases when the parties' relations have arisen at the border administratively or criminally and civilly - these are, first of all, obligations due to causing harm. In torts, a common source of liability is guilt in the actions of the harmed party. At first glance, civil law relations are not related to the subjective component, since guilt is presumed in most cases and if the subject has not fulfilled the obligation provided for in the contract, how he treated this obligation and his failure to fulfill it will most likely not be investigated - or rather it will not be investigated in the context of the ground for prosecution. However, subjective elements of legal relations are not limited to guilt. Scientists of the Soviet period, describing the composition of civil law relations, emphasize "behavior, will, and interest"<sup>1</sup>, "unity of will and its expression"<sup>2</sup>, etc. These elements are necessary for the emergence of a legal relationship, while for its correct qualification and legal regulation it is necessary to evaluate other subjective factors, namely, the integrity of the subject, its purpose and intention.

One of the fundamental differences between common law and continental law systems is evident in approaches to determining the intentions (or purposes) of business entities. In common law systems, the analysis of intentions is one of the criteria for determining the existence of a legal relationship and, as a result, the ability of parties to have legal remedies for the infringed right. The very fact of the agreement and the counter satisfaction fixed in it is not always sufficient to establish the existence of legally binding obligations between the parties, as the courts may consider that the execution of the agreement is impossible due to the absence of the parties' intention to create a legal relationship. The jurisprudence has formed two basic approaches to assessment and proof of intent: if the agreement refers to an agreement concluded for personal purposes, the absence of intent to create a legally binding relationship is presumed, while the opposite is

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<sup>1</sup> Ioffe O.S. Selected Works, in 4 volumes, 4th volume, Legal Center Press, Anthology of Legal Science Series, St. Petersburg, 2010, pp. 1. 359

<sup>2</sup> Krasavchikov O.A. "Category of Civil Law Science", Selected works in two volumes, Volume 2, Bar Association "Private Law", Statute, Moscow, 2017, pp. 1. 152

presumed for business participants - the existence of a corresponding intention. The general system of law assesses this subjective factor based on an objective approach. The basic rules of the objectivity test are fixed in the case of *Edmonds vs Lanson* (2000)<sup>3</sup> in which the judge stated that the intention should be evaluated objectively, i.e. it should be based on the circumstances and actions of "reasonable" people, rather than analyze the "state of mind" of individual subjects. The objective approach is conditioned by the fact that, firstly, it is not always possible to find out the actual intentions of the parties, and, secondly, almost always when the intention of the parties to enter into a legal relationship is challenged, one party claims that it considered these legal relations to be legally binding, and the other, that it considered these relations exclusively in the context of moral obligations, and this contradiction does not allow to establish the joint will of the parties. Therefore, abstracting from the opinions of the parties on the merits of the obligation, the Court proceeds from the circumstances of the case and assesses them on the basis of the general premise that a reasonable person in such a position would most likely do or intend to do.

As mentioned above, the research of the parties' intention is related to the lack of strict requirements for the form of the contract, so wherever there is a clear understanding of the purpose of creating a legally binding agreement, English law requires a binding written form. In the area of employment relationships, especially collective agreements, the desire to give legal effect to the terms of the contract must be further stated.

It is much easier to assess a written agreement for its purposes to create a legally binding obligation, since it is possible to assess all its components - the existence of an offer, acceptance and counter satisfaction. The oral form does not always make it possible to establish the components of a legal contract unambiguously, so the analysis of the relevant objectives plays a more significant role. In this case, the presence of the presumption plays a role that simplifies the proof of the absence or presence of intent of one of the parties. The first thing the courts face is the need to correctly qualify the attitude as to whether it relates to an agreement concluded for personal purposes or a commercial contract. The definition of a personal contract is based on an assessment of its subject matter. Such agreements may have, in a sense, all the components of a legal obligation: an offer, acceptance and some counter performance. Especially often such contractual models are found in the sphere of family relations and in a certain social environment - for example, colleagues agree in turn to pay for joint dinners or transportation to work, or friends prepare for a competition together, etc. As pointed out by Lord Atkin in the *Balfour v. Balfour* case<sup>4</sup>, such agreements cannot have legal protection, not because rights and obligations are required to be fulfilled in the event of a breach of contract, but because the parties did not intend to prosecute in the first place, and therefore did not

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<sup>3</sup> *Edmonds and Lawson* Case No: QBENF 1999/1019/A2  
<http://www.bailii.org/ew/cases/EWCA/Civ/2000/69.html>

<sup>4</sup> *Balfour v Balfour* 2KB 571 (1919)  
[https://www.uni-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches\\_Recht/Contract\\_Law/Siry\\_WS\\_2015\\_16/contract\\_p1\\_balfour\\_v\\_balfour.pdf](https://www.uni-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches_Recht/Contract_Law/Siry_WS_2015_16/contract_p1_balfour_v_balfour.pdf)

give legal effect to the contract themselves. However, the existence of the presumption does not mean that it cannot be challenged. In the *Merritt v Merritt* case<sup>5</sup>, the arrangements between husband and wife were similar to those that existed between the spouses in the above-mentioned case, but the party was able to rebut the presumption because the spouses did not live together and were in the process of divorce. In this situation, despite the personal nature of the relationship - the support of one spouse by the other - their relationship was neither friendly nor trustworthy, and the parties considered the possibility of enforcing their obligations through the courts and therefore intended to make their relationship legally binding.

An assessment of the parties' ability to seek judicial redress for the infringed right should also be considered as evidence of the existence or lack of intent to create a legally binding relationship. In some disputes ("*Jones v Padavatton*"<sup>6</sup>), the application of relief and the predictability of that outcome become key factors. So, referring to the absence of a legal relationship, the plaintiff argued that she did not anticipate that her mother would sue her and try to take back the house that she had been given for her daughter's failure to meet her obligations to pass the bar exam, as this was an abnormal relationship for her daughter and mother. Therefore, the Court, in considering this dispute, proceeded, *inter alia*, from the fact that the relationship established between the parties in the beginning had an exclusively trusting relationship, based on a desire to help each other and voluntarily implement the agreements. So, the decision on the existence of the intention to create a legally binding relationship depends on the following parameters: the existence of key components of the contract; the fact of counter-execution, expressed in material form; the parties do not exclude the possibility of using legal remedies in case of violation by one of the parties of their obligations, including prosecution; the commission by one of the parties of actions aimed at the implementation of the relevant agreements, which entail significant costs for the party.

In commercial relations, the existence of the objective of creating a legally binding agreement is presumed, as a different approach would contradict the meaning of business. If a contract is considered commercial, if there is doubt as to its legal nature, it is treated as an exclusive contract - if the agreement is not concluded for personal purposes, it means that it is commercial in nature. It is practically impossible to argue the presumption of the existence of the intention to bind oneself to legal obligations between the subjects of "ordinary" business activity, the problem arises where contracts are not concluded in writing and where the nature of relations is mixed (besides the entrepreneurial component there are elements of educational services, advertising activities, payment of some additional (prize) bonuses, etc.). So, in the case of *Edward v Skyways*<sup>7</sup> (1964) the pilot of Skyways airline was transferred to the composition of reserve pilots, for which the company promised to pay him an additional payment, qualified by the company, as a thank you for your service. As a result, the company revised

<sup>5</sup> *Merritt v Merritt* EWCA Civ 6 (1970), WLR 1211 <http://www.bailii.org/ew/cases/EWCA/Civ/1970/6.html>

<sup>6</sup> *Jones v Padavatton* (1968) EWCA Civ4 <http://www.bailii.org/ew/cases/EWCA/Civ/1968/4.html>

<sup>7</sup> *Edward v Skyways* (1969) 1 WLR 349 <http://www.diprist.unimi.it/fonti/881.pdf>

the payment, arguing that the payment was in the good faith of the party, but was non-binding in nature, since the original contractual relationship between the parties did not provide for such payments and considered this element of the contract as a condition of personal nature. The Court nevertheless pointed out that, even though the agreement between the airline and the pilots did not indeed contain such payments, the remuneration had been legally binding since it had become part of the contract for transfer to replacement pilots.

Similarly, disputes are considered if a promise is made as part of a marketing move or a special advertising campaign. Since advertising is not generally regarded as an offer, it will be binding in cases where it is part of the offer. Such conclusion was made in *Esso Petroleum Ltd v Commissioners of Customs and Excise*<sup>8</sup> - when the promise of a commemorative coin from the World Cup for the purchase of 4 cylinders of petrol was qualified by the court as a legally binding offer and indirectly having a commercial character.

The analysis of these cases allows coming to the following conclusions: intention (purpose) to create a legal relationship is one of the key attributes of the contract, along with the offer, acceptance, counter execution, while confirmation of the existence of an explicit offer, acceptance and counter execution can be a strong argument in favor of the existence of intention. If the formal approach is followed and all agreements are recorded in writing, the evaluation of the attributes of the contract is carried out through the analysis of the text, but the courts focus on establishing the existence or absence of intent, even if there are other explicit signs of legal relations. The main purpose of presumptions is not to encourage parties to challenge existing obligations between them on the basis of their intended intentions.

In contrast to the common law system, European treaty law does not use a system of presumptions in general, and in particular does not differentiate approaches to the assessment of legal relationships depending on the type of agreement. The principles of European treaty law (art. 2.102)<sup>9</sup> state that the intention of the parties to be bound by a treaty is determined on the basis of statements or on the conduct of the parties, as a result of which the parties were reasonably understood by the other party. So, if such issues arise, the courts will use an objective approach, evaluating what the parties have said or done.

In the civil law of the Russian Federation the intentions and objectives have a different legal content. The intention to create a legally binding relationship is not in the sphere of legal evaluation, because if there is a contract, it is considered established. Provisions on application of the written form of the transaction only in relations between legal entities and in transactions between individuals for the amount exceeding 10,000 Rubles make senseless the analysis of intention of the parties, formation of presumptions, etc. If the parties have formalized their contractual relations in

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<sup>8</sup> *Esso Petroleum Ltd v Commissioners of Customs and Excise* (1976) 1WLR 1 HL(E)  
[http://iclr.co.uk/document/1971001349/casereport\\_84927/html](http://iclr.co.uk/document/1971001349/casereport_84927/html)

<sup>9</sup> Principles of European Treaty Law, approved by a resolution of the European Parliament on May 6, 1994..  
<http://www.law.edu.ru/norm/norm.asp?normID=1261692&subID=100127328,100127329,100127423,100127536,100127553#text>

writing, it becomes a confirmation of the existence of their task to bind themselves legally significant obligations. Clarification of intentions of subjects of civil circulation will be carried out just in opposite cases - not for creation of legal connection, but for its refutation.

A different approach in Russian civil law to purposes. The first place where the understanding of the purpose meets is in defining the relations governed by civil law. The main object of legal regulation is business activity - it is an activity carried out at your own risk and aimed at systematic profit from the sale of goods, services, work and the use of property. The term goal is not used, but it is obvious that it is the key indicator to differentiate ordinary activities from business, which has a certain purpose - making profit. Further, this category is used to differentiate legal entities into commercial and non-commercial ones, to distinguish individuals from entrepreneurs, etc. Depending on the category of persons, a subject will have a different set of legal means used to protect the violated right.

The question of the correct qualification of entrepreneurial activity in courts has been raised repeatedly and is related to several aspects. One of the issues arises from the internal structure of the judicial system in the Russian Federation, where the division of competence between judicial bodies is carried out by the subject composition. Disputes between business entities in connection with their business activities are considered in arbitration courts and other disputes in courts of general jurisdiction. So, the decision to choose a competent court<sup>10</sup> resulted in the definition of the concept and content of entrepreneurial activity. The municipal public enterprise "Gorodskoy Vodokanal" applied to the State Housing Inspectorate of Sakhalin Region to the arbitration court to challenge the decision to bring to administrative responsibility for the termination of the provision of cold water supply utilities in five apartment buildings. The two courts considered that the offence in which the administrative proceedings arose was not related to business activities, and the provision of utility services was the implementation of a function other than commercial. In its ruling, the Judicial Board for Economic Disputes of the Supreme Court, by annulling the acts of subordinate courts, pointed out that the company is a commercial legal entity, therefore, it is also a commercial activity; therefore, the administrative proceedings that have arisen are related to business activities that fall within the competence of arbitration courts. In this definition, the court adopted a casual definition of entrepreneurial activity as the basis, without focusing on other features specified in Paragraph 1 of Article 2 of the Civil Code.

The second aspect of the definition of entrepreneurial activity relates to the fact that the purpose becomes the main determinant and the result for which it is carried out is no longer decisive. It has been repeatedly noted in court decisions that it is not the purpose of the profit as a result that is

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<sup>10</sup> Case No. A59-22/2017 [http://sudact.ru/vsrf/doc/KveV9u9bb8IC/?vsrf-txt=Городской+водоканал+Сахалинская+инспекция&vsrf-case\\_doc=&vsrf-lawchunkinfo=&vsrf-doc\\_type=&vsrf-date\\_from=&vsrf-date\\_to=&vsrf-judge=&=1539059194251&snippet\\_pos=56#snippet](http://sudact.ru/vsrf/doc/KveV9u9bb8IC/?vsrf-txt=Городской+водоканал+Сахалинская+инспекция&vsrf-case_doc=&vsrf-lawchunkinfo=&vsrf-doc_type=&vsrf-date_from=&vsrf-date_to=&vsrf-judge=&=1539059194251&snippet_pos=56#snippet)



important, but rather the purpose of the profit or the focus of action on the result.<sup>11</sup>

However, the prevailing numbers of court decisions that address the issues of determining the goals of business entities are disputes in the field of tax law. The existence of different taxes and tax systems for business and non-commercial activities, a differentiated approach to determining the taxable base and the possibility of tax deductions for individuals have led to attempts by tax authorities to reinterpret business activities. Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No.53 of 12.10.2006<sup>12</sup> defined the concept of reasonable and unjustified tax benefit. And the necessity of such qualification has affected the creation of business objectives, when instead of the usual casual approach (the intention to systematically make profit from their activities) the court should establish the "real economic sense" of operations carried out as part of entrepreneurial activity and the existence of a "business objective". There is no concept of a business purpose and its qualification is done on an ad hoc basis, taking into account the specific circumstances of the case. The doctrine of "business purpose" has been applied in the USA<sup>13</sup> and Great Britain<sup>14</sup> since the mid-30s of the 20th century and justifies the possibility of courts not to provide tax benefits and benefits to business entities if their activities do not lead to other economic benefits besides reducing the tax burden. The evaluation of a business purpose is carried out in the context of an analysis of the common law system's intentions. It is an objective test of the economic content of the transaction and a test of subjective business objectives. In the first case, the objective economic indicators are analyzed (any improvement in the financial situation of the subject, not related to tax savings), the second test proceeds from the assessment of the intention of the subject to get a positive economic effect from the transactions or operations (development of a new type of activity, doing business in new regions (expansion of business geography). There is a rather clear connection in the approaches to assessment of intentions, both in terms of analysis of the parties' actual will to create a legally binding legal relationship, and in terms of research on the existence of a business purpose of the subjects for tax purposes. After the objective test, which presupposes some element of abstraction from a particular transaction, special conditions inherent in the respective subject composition are always taken into account. Russian courts, having incorporated the doctrine of "business purpose" into the practice of tax dispute resolution, have taken a different way of determining the intentions and goals of the parties to obtain economic benefits from real business activity. Since the general trend of Russian courts is to minimize the accounting of subjective components in private legal relations, the main task of tax authorities (which subsequently becomes the subject of legal

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<sup>11</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation of October 24, 2006 N 18 "On some issues arising in courts when applying the Special Part of the Code of Administrative Offences" Bulletin of the Supreme Court of the Russian Federation. 2006. N 12.

<sup>12</sup> Resolution of the Plenum of the RF No.53 of 12.10.2006.

[http://www.arbitr.ru/as/pract/post\\_plenum/3151.html](http://www.arbitr.ru/as/pract/post_plenum/3151.html)

<sup>13</sup> Gregory v Helvering 293US 465 (1935) <https://supreme.justia.com/cases/federal/us/293/465/>

<sup>14</sup> Ramsay and Furniss v Dawson 1984 AC 474 <http://www.bailii.org/uk/cases/UKHL/1983/4.html>

proceedings) is to detect the elements of a tax offense in the actions of a business entity. Thus, tax benefit can be recognized as unjustified if it is proved that there is no due diligence and caution in his actions in relations with counterparties (paragraph 10 of the Resolution of the Plenum of the SAC of the RF № 53 of 12.10.2006). This leads to the fact that the evaluation of any other economic components of entrepreneurial activity is reduced to a minimum, including not only the receipt of benefits, but also the achievement of other important commercial goals (access to a new market, the implementation of new associated activities, etc.).

To sum up, it should be noted that legal systems based on formalism, which require compliance with a certain form to recognize the very fact of the existence of legal relationship of the parties, do not consider the intention and goals of the subjects as a legal fact - creating a civil legal relationship. The use of such subjective characteristics of legal relations as an objective is primarily related to the need to classify the various legal institutions and categories in civil law. However, the estimation of the purpose and clarification of the real economic content of activity of economic subjects influences occurrence of tax legal relations and in this connection it is possible to define a business purpose, more precisely its absence, as a legal fact. The system of common law, built largely on the clarification of the real content of the transaction, freedom of contract, interpreted in the broadest sense, allows the parties to choose and form of fixation of their legal relations and their content. Since the oral form of the contract is widely used, the courts have established mechanisms and ways to assess the intentions and objectives of the parties, both in terms of intent to create a legal relationship, and in terms of assessing the business purpose in the field of tax law, in all cases, the intentions and objective are a legal fact that creates civil and tax legal relations.

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