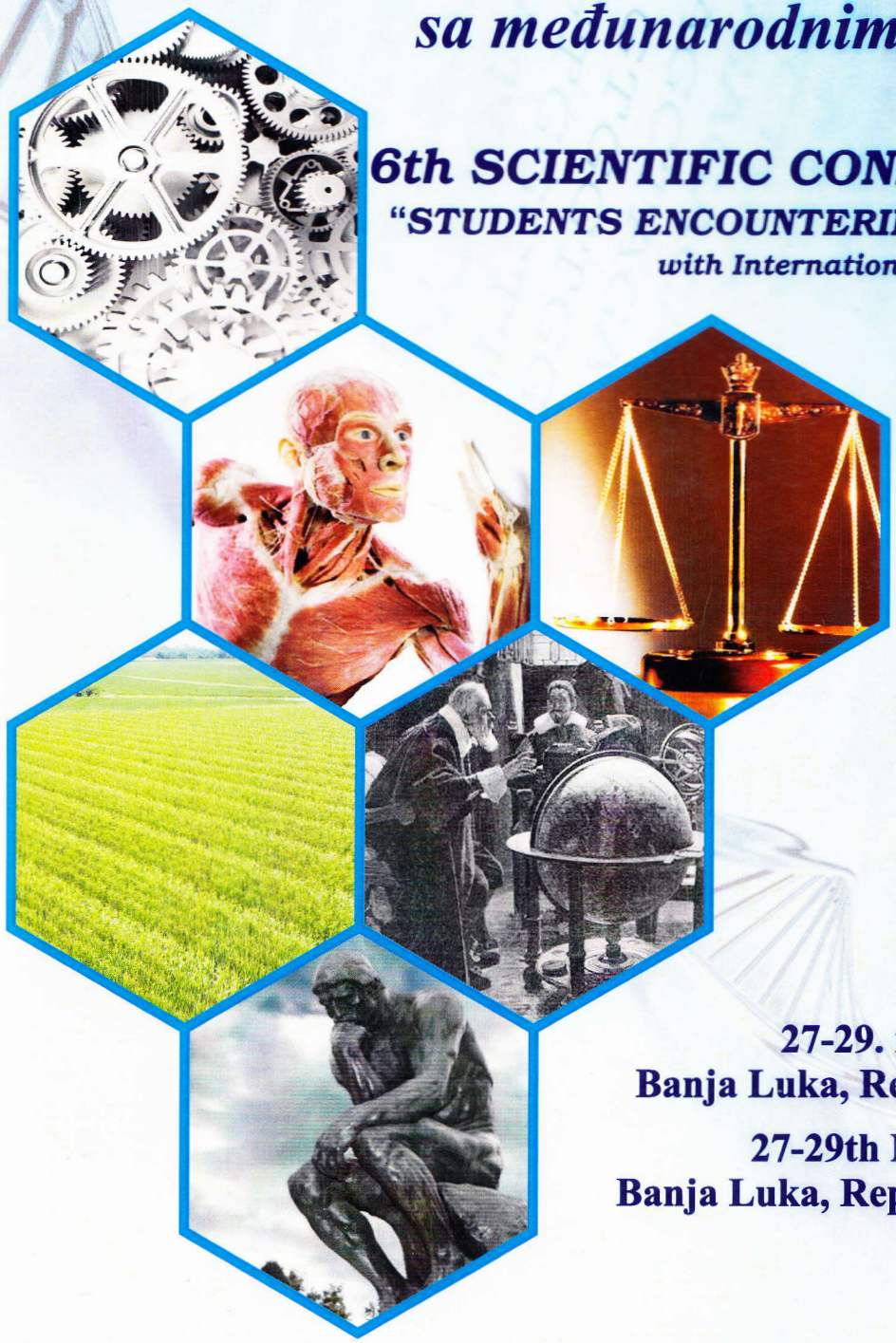
6. NAUČNO-STRUČNI SKUP
"STUDENTI U SUSRET NAUCI"
sa međunarodnim učešćem



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TEORIJSKI I PRAKTIČNI ZNAČAJ PODELE UGOVORA NA JEDNOSTRANE I DVOSTRANE

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U teoriji prava, ali i u svakodnevnom govoru, postoje razni nazivi, kojima se obeležava saglasnost volja dva ili više lica, kojom se ostvaruje neko pravno dejstvo. Najopštiji i najčešće korišćen termin je – ugovor (contractus). U svim zemljama današnjice ugovor je sporazum najmanje dva lica, kojim pristaju da preduzmu određene radnje, ili, što je ređe, da se od njih uzdrže. Latinska izreka glasi: Verba ligant homines, što znači da dužnika ne obavezuje poverioćeva korist od činidbe, nego dato obećanje. Ako se obećanje ne ispuni, postoje brojne mere sankcionisanja njegovog davaoca, uključujući i pravne mere prinude.
Princip slobode ugovaranja dopušta strankama da zaključuju brojne i vrlo raznovrsne ugovore, koji se pokoravaju opštim pravilima, kako u pogledu zaključenja, tako i u pogledu njihovog izvršenja. Zato se u teoriji javljaju mnoge podele ugovora (tradicionalne i novije).
Podela ugovora na jednostrane i dvostrane, učinjena je po uzoru na rimske pravnike, i ima sasvim drugo značenje. Ona se ne vrši prema broju volja koje učestvuju u sklapanju ugovora, već s obzirom na njihovo dejstvo, na raspored prava i obaveza koje iz ugovora proističu. Ali, baš zbog nominalne podudarnosti dve različite podele, ovi izrazi nisu baš srećno izabrani, pa se zbog toga u novije vreme radije upotrebljavaju nazivi „jednostrano obavezni" i „dvostrano obavezni" ugovori.
Cilj ovog rada jeste da, pored teorijskog ukaže i na praktični značaj bavljenja ovom temom, koji se ogleda u: raskidu ugovora, prigovoru neispunjenja ugovora, riziku slučajne propasti stvari, laesio enormis, primeni klauzule rebus sic stantibus, prilikom tumačenja i ustupanja ugovora.

Ključne riječi: contractus; pacta; vrste ugovora; jednostrano i dvostrano obavezni ugovori.

THEORETICAL AND PRACTICAL IMPORTANCE OF THE CLASSIFICATION OF CONTRACTS INTO UNILATERAL AND BILATERAL

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In the theory of law, as well as in everyday speech, there are different terms used to describe the agreement of two or more persons which results in a legal effect. The most common, as well as the most general, term used is – contract (contractus). In all modern countries, a contract is an agreement between at least two persons, according to which they accept to perform certain actions, or less frequently, abstain from them. There is a Latin proverb which says Verba ligant homines, meaning that the debtor is not bound by the creditor's benefit of the transaction, but the given word. If the promise is not fulfilled, there is a number of sanctioning measures that could be undertaken against the party giving the promise, including the legal measures of coercion. The principle of freedom of making contracts allows the parties to make numerous and various contracts governed by the general rules, in the process of making them as well as their realization. Numerous contract classifications (both traditional and modern) are present in theory. The classification of contracts into unilateral and bilateral is done based on the model of Roman lawyers, and has a completely different meaning. It is not made according to the number of wills involved in the making of a contract but according to the effect of the contract, to the rights and obligations which stem from it. But precisely because of the nominal matching of these two different classifications, these terms are not the best choice, which is why, recently, the terms "unilaterally binding" and "bilaterally binding" are used to describe contracts. The aim of this paper is to emphasize the practical importance, apart from the theoretical one, of dealing with this topic, which can be observed in the domain of: contract breaking, objecting to the unfulfillment of a contract, risk of an accidental failure of the object of the contract, laesio enormis, application of the clause rebus sic stantibus, the process of legal interpretation of the contract and the cession of the contract.

Key words: contractus; contract types; unilaterally and bilaterally binding contracts