1 (одного) року з дня настання строку вимоги, в противному випадку всі свої претензії заявляти буде нікому.

Серед інших проблемних аспектів порушеного питання можна виділити порядок заявлення претензій кредиторами в межах зазначених строків, способу такого звернення, доказів про таке, тощо. Зазначені питання стануть предметом подальших досліджень автора.

Таким чином, у зв'язку з поширеною в Україні практикою кредитування населення питання регулювання строків звернення кредитора до спадкоємців є актуальним і потребує вивчення з метою внесення відповідних змін до чинного законодавства.

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COMPARATIVE ANALYSIS OF CIVIL AND COMMON SYSTEM OF LAW

Legal systems in countries around the world generally fall into one of two main categories: common law systems and civil law systems. There are roughly 150 countries that have what can be described as primarily civil law systems, whereas there are about 80 common law countries.

The main difference between the two systems is that in common law countries, case law – in the form of published judicial opinions – is of primary importance, whereas in civil law systems, codified statutes predominate. But these divisions are not as clear-cut as they might seem. In fact, many countries use a mix of features from common and civil law systems. Understanding the differences between these systems first requires an understanding of their historical underpinnings.

The Historical Origins of Common and Civil Law Systems

The original source of the common law system can be traced back to the English monarchy, which used to issue formal orders called «writs» when justice needed to be done. Because writs were not sufficient to cover all situations, courts of equity were ultimately established to hear complaints and devise appropriate remedies based on equitable principles taken from many sources of authority (such as Roman law and «natural» law). As these decisions were collected and published, it became possible for courts to look up

precedential opinions and apply them to current cases. And thus the common law developed.

Civil law in other European nations, on the other hand, is generally traced back to the code of laws compiled by the Roman Emperor Justinian around 600 C. E. Authoritative legal codes with roots in these laws (or others) then developed over many centuries in various countries, leading to similar legal systems, each with their own sets of laws.

Countries following a common law system are typically those that were former British colonies or protectorates, including the United States.

Features of a common law system include:

1. There is not always a written constitution or codified laws;
2. Judicial decisions are binding – decisions of the highest court can generally only be overturned by that same court or through legislation;
3. Extensive freedom of contract – few provisions are implied into the contract by law (although provisions seeking to protect private consumers may be implied);
4. Generally, everything is permitted that is not expressly prohibited by law.

A common law system is less prescriptive than a civil law system. A government may therefore wish to enshrine protections of its citizens in specific legislation related to the infrastructure program being contemplated. For example, it may wish to prohibit the service provider from cutting off the water or electricity supply of bad payers or may require that documents related to the transaction be disclosed under a freedom of information act. There may also be legal requirements to imply into a contract in equal bargaining provisions where one party is in a much stronger bargaining position than the other.

There are few provisions implied into a contract under the common law system – it is therefore important to set out all the terms governing the relationship between the parties to a contract in the contract itself. This will often result in a contract being longer than one in a civil law country.

Countries following a civil law system are typically those that were former French, Dutch, German, Spanish or Portuguese colonies or protectorates, including much of Central and South America. Most of the Central and Eastern European and East Asian countries also follow a civil law structure.

The civil law system is a codified system of law. It takes its origins from Roman law. Features of a civil law system include:

1. There is generally a written constitution based on specific codes (e. g., civil code, codes covering corporate law, administrative law, tax law and constitutional law) enshrining basic rights and duties; administrative law is however usually less codified and administrative court judges tend to behave more like common law judges;

2. Only legislative enactments are considered binding for all. There is little scope for judge-made law in civil, criminal and commercial courts, although in practice judges tend to follow previous judicial decisions; constitutional and administrative courts can nullify laws and regulations and their decisions in such cases are binding for all.

3. In some civil law systems, e. g., Germany, writings of legal scholars have significant influence on the courts.

4. Courts specific to the underlying codes – there are therefore usually separate constitutional court, administrative court and civil court systems that opine on consistency of legislation and administrative acts with and interpret that specific code.

5. Less freedom of contract – many provisions are implied into a contract by law and parties cannot contract out of certain provisions.

A civil law system is generally more prescriptive than a common law system. However, a government will still need to consider whether specific legislation is required to either limit the scope of a certain restriction to allow a successful infrastructure project, or may require specific legislation for a sector.

Civil or civilian law is a legal tradition which is the base of the law in the majority of countries of the world, especially in continental Europe and the former Soviet Union, but also in Quebec (Canada), Louisiana (U. S.), Puerto Rico (a U. S. territory), Japan, Latin America, and most former colonies of continental European countries. The Scottish legal system is usually considered to be a mixed system in that Scots law has a basis in Roman law, combining features of both uncodified and Civil law systems.

There are a number of provisions implied into a contract under the civil law system – less importance is generally placed on setting out all the terms governing the relationship between the parties to a contract in the contract itself as inadequacies or ambiguities can be remedied or resolved by operation of law. This will often result in a contract being shorter than one in a common law country.

It is also important to note in the area of infrastructure that certain forms of infrastructure projects are referred to by well-defined legal concepts in civil law jurisdictions. Concessions and Affermage have a definite technical meaning and structure to them that may not be understood or applied in a common law country. Care should be taken, therefore, in applying these terms loosely. This is further considered under Agreements.

Roles of a Lawyer and Judge in Each System

In civil law countries, judges are often described as «investigators». They generally take the lead in the proceedings by bringing charges, establishing facts through witness examination and applying remedies found in legal codes.

Lawyers still represent the interests of their clients in civil proceedings, but have a less central role. As in common law systems, however, their tasks commonly include advising clients on points of law and preparing legal

pleadings for filing with the court. But the importance of oral argument, in-court presentations and active lawyering in court are diminished when compared to a common law system. In addition, non-litigation legal tasks, such as will preparation and contract drafting, may be left to quasi-legal professionals who serve businesses and private individuals, and who may not have a post-university legal education or be licensed to practice before courts.

Білик М. Порівняльний аналіз систем загального та цивільного права.

У роботі подано порівняльний аналіз систем загального та цивільного права. Автор досліджує питання історичного походження вказаних систем, показує деякі аспекти їх функціонування у різних країнах світу, а також аналізує функції юриста та судді у кожній з систем.

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ОСОБЛИВОСТІ ВИЗНАЧЕННЯ ПОНЯТТЯ «ЕЛЕКТРОННИЙ ПІДПИС»: ПОРІВНЯЛЬНО-ПРАВОВИЙ АНАЛІЗ

Відповідно до Закону України «Про електронний цифровий підпис» електронний підпис – дані в електронній формі, які додаються до інших електронних даних або логічно з ними пов'язані та призначені для ідентифікації підписувача цих даних. У перекладі на «звичайну», електронним підписом можна вважати будь-яке відтворення вашого підпису, за яким можна встановити, що певний документ підписали саме ви у електронній формі. Однак питання постає не стільки у відтворенні такого підпису, скільки в підтверджені того, що відтворення такого підпису відбулось безпосередньо його власником. Та про тонкощі захисту цього процесу згодом, перейдемо до визначення.

Спершу, хоч і не досить довго, ми жили без електронного підпису (на законодавчому рівні). Відомо, що першочергово в правовідносинах застосовували «аналог власноручного підпису», про який і досі визначено у Цивільному кодексі України. Так, статтею 207 кодексу встановлено, що «використання при вчиненні правочинів факсимільного відтворення підпису за допомогою засобів механічного, електронного або іншого копіювання, електронного підпису або іншого аналога власноручного підпису допускається у випадках, встановлених законом, іншими актами цивільного законодавства, або за письмовою згодою сторін, у якій мають міститися зразки відповідного аналога їхніх власноручних підписів» [3]. Тобто на рівні «електронний підпис» або інший аналог власноручного підпису ми прямо розуміємо, що електронний підпис було названо тим самим аналогом, а точніше – одним з них на законодавчому рівні.