CERTAIN CONSIDERATIONS REGARDING THE CLASSIFICATION OF ASSETS UNDER THE PROVISIONS OF THE NEW CIVIL CODE

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Abstract: *Assets and their classification formed a study element for the law doctrine, representing a theoretical and practical interest. Tangible or intangible things, which are the subject of a property right, represent assets and correlated with the concept of asset, also the notion of heritage must be analyzed. Heritage represents all rights and obligations that have an economic content, valuable in money, belonging to a matter of civil law. The new Civil Code contains interesting aspects of assets classification.*

Keywords: *assets, heritage, classification of assets.*

Given the absence of a definition on assets within the Civil Romanian Code from 1864, the doctrine has now the task to establish the exact meaning of assets.

Thus, the heritage was defined as an economic value useful for material or spiritual needs of man, capable of appropriation as economic right[1] and for being in the presence of an asset, within the meaning of the civil law, it is necessary that the economical value to be capable to satisfy a heritage need and to be capable of appropriation under the form of heritage right. In the strict sense, the asset designation suits the within the current definition, and in a wider sense, an asset represents not only a thing, an issue, but also the heritage right that has as object that certain thing, issue.[2] So, the object of the juridical act is the object of the specific civil judicial relation, assets forming, in the case of the juridical assets, the derived object of it[3]. It was stressed that the purpose and content of civil judicial relationship is different, the actions and omissions born by the civil judicial relation form its content, and subjective civil rights and civil obligations arising from the act, are forming the content or effects of the legal act. Explaining such correlation, it was noted that the civil act is subject to the obligation or obligations

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[1] Gh. Beleiu, **Romanian Civil Law. Introduction in the civil law; Subjects of the Civil law,** the 5th edition, reviewed and amended by M. Nicolae, P. Truşcă, Şansa SRL, 1998, pages 98-99; P. Truşcă, **Introduction in the civil law. Natural person**, the 3rd edition, "Universul Juridic", Bucharest, 2005, pages 80 – 81.

[2] P.M. Cosmovici, **Introduction in the civil law,** ALL Publishing House, Bucharest, 1993, page 85.

[3] M. Mureşan, **Civil Law. Overall Part**, Cordial Lex Publishing house, Cluj – Napoca, 1996, page 139; G. Boroi, **Civil law. Overall part,** All Educational Publishing house, Bucharest, 1989, page 186, V. Economu, Colectively, **Civil law treaty. Overall part,** Academiei Publishing House, Bucharest, 1967; Gh. Beleiu, Colectively. Coordinator P. Cosmovici, **Civil law treaty. Overall part. Vol. I.** Academiei Publishing House, Bucharest, 1989, page 185.

arising from that act, and the obligation is owed by the debtor performance.[4]

Under economical aspect, it was also shown that asset is every useful thing and in judicial meaning, assets are things that can be object of the heritage rights and obligations, the intellectual creation works and energy of any kind, if these are capable of being objects of heritage rights and at large, assets are the intellectual creation works and energy of any kind, as objects of the heritage rights and obligations but also the heritage rights regarding the actions related to these assets within the strict sense[5].

From this approach, the concept was differently defined, receiving other meanings. Thus, for some authors, the subject of civil act was the creation, amendment, rendering, settlement or extinction of a civil judicial relation[6], the object of the relation coinciding with the effects produced, because the creation, amendment, rendering, settlement and extinction of the judicial relations represent the very effect of the civil judicial act[7].

Another perspective states the object of the civil judicial act is constituted by the interests regulated by the parties, within the limits and according to the settlements of law, through the intercession of the civil judicial act[8].

The new Civil Code, in a lapidary measure, states within art 535 that assets are the things, tangible or intangible, which are subject of a property right, the following text presenting a classification of the assets[9].

The heritage must be also considered, correlated with the notion of asset[10].

The mentioned authors distinguish between the assets, broadly, this representing the assets them selves and also the rights regarding these, and in a narrow sense, the assets are referring to the assets that can imply patrimony rights.

The notion of heritage has involved some discussion, due to the fact that within our national legislation prior to the establishment of the new Civil Code, there was no definition of heritage, so the one designated to build such a definition was the legal doctrine.

Economically, the heritage represents the totality of assets that form the property of a person[11].

This economical definition can be transposed in the judicial field, when assets

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[4] Gh. Beleiu, **Civil law treaty**..., 1989, page 185

[5] I.P. Filipescu, A.I. Filipescu, **Civil law. Ownership right and other real rights,** ACTAMI publishing house, Bucharest, 2000, page 30.

[6] I. Rosetti.Bălănescu, Al. Băicoianu, Romanian Civil law**, Vol. 2,** Bucharest, 1943, page 33, A. Ionaşcu, Civil Law**. Overall Part,** Academiei Printing house, Bucharest, 1963, page 96.

[7] A. Cojocaru, **Civil law. Overall Part,** Lumina Lex Publishing House, Bucharest, 2000, page 210.

[8] D. Cosma, **General theory of the judicial civil act**, Scientific Printing House, 1969, page 213

[9] regarding the classification of the assets within the new Civil Code, the following texts are to be seen: A. Dobre, General Issues regarding the assets classification within the new Civil Code, Commercial Law Journal, no. 6/2010, pages 86-92; Quebec Civil Code, art 899 states that assets, tangible and intangible are divided in mobile and immobile.

[10] G. Boroi, C.A. Anghelescu, Civil Law courseOverall Part, Hamangiu Printing house, Bucharest, 2011, page 74.

[11] I. P. Filipescu, *op.cit.,* page 8; I. P. Filipescu, A. I. Filipescu, *op.cit.,* page 10.

are considered material things that compose the patrimony, the fortune of a person, but also the rights held by that person, economical content rights, and valuable in money.[12]

The composition of heritage, include only the rights and obligations with economic content, not assets which form them.[13]

In terms of legal, heritage means all rights and obligations that have an economic content, valued in money belonging to a person. So, the heritage contains all the rights of individuals, rights valued in money; so their correlative obligations.

In this respect we mention art. 31 of the new Civil Code, under which any natural or legal person - that is, I would say, any subject of civil law - holds a heritage that includes all rights and liabilities that can be monetized and belong to that person.

Analyzing the concept of heritage, the subjective civil rights that do not have an economic content are excluded, these being related to person: personal non-property rights, rights covered the participation of individuals to - exercise public functions and actions of civil status.

In the content of heritage, the rights and obligations with economical feature are in close correlation. Rights form the assets and obligations for the liabilities.

In relation to this formulation, the heritage has been defined by Professor George Luţescu as an accounting expression of all the powers belonging to an entity, prefiguring one of the features' legal heritage.[14]

The heritage is comprised by assets and liabilities. Assets consist of all the rights that have economic value, expressed in money. This can include: ownership, other real rights, may also include the claim rights.

Regarding the patrimonial liability aspect, it contains the duties and obligations that have an economic content, content expressed in money. Liabilities can be formed by the obligation to give (to send or establish a real right), may consist in an obligation to do (to make some positive benefit) or may consist in the obligation of doing something that the debtor could have done before concluding that legal Obligation.

Finally, we may assert that heritage is constituted by all patrimonial rights and obligations, with an economic content assessable in money belonging to a matter of law (natural or legal person), rights and obligations are regarded as assets or liabilities and are in permanent connection and interdependence[15].

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[12] C. Hamangiu, I. Rosetti-Bălănescu, A. Băicoianu, **Romanian Civil Law Treaty**, Bucharest, 1929, vol. I, p. 844.

[13] V. Stoica, Civil Law. Main real rights,1, Humanitas Printing House, Bucharest, 2004, p. 51, the author quoting A. Seriaux, op. cit., în Revue trimestrielle de droit civil nr. 4/1994, pp. 802-803

[14] G. N. Luţescu, **The overall theory of the real rights. Classification of assets. Main real rights**., Bucharest 1947, page 21.

[15] Regarding the definition of heritage, to be seen: C. Stătescu, C. Bârsan, **Civil law. The overall theory of the real rights**, Bucharest University, 1988, p. 5; C. Bîrsan, M. Gaiţă, M. M. Pivniceru, **Real rights European Institute**, Iaşi, 1997, pp. 7-8; I.P.Filipescu, **op.cit.**, pp. 8-9; Traian Ionaşcu, Salvator Brădeanu, **Main real rights in Romanian Republic**, **Academiei Printing house,** Bucharest, 1978, p. 13; Li. Pop, **Heritage right,** Lumina Lex printing house, Bucharest, 1996, p. 9;

The definition of heritage will include what is considered necessary to highlight the economic value concept and the idea of universal and personal heritage foundation.[16]

The financial evaluation criteria in assessing patrimonial rights and obligations was considered fundamental for assessment of the monetary value of the rights and obligations[17] that make up the economic value of assets determined as a whole.[18]

Since property consists of rights and obligations of economic value, the fungibility of property items has been documented broadly, but this does not reduce, however, to the replacement of goods with other goods in fulfillment of an obligation.[19]

Analyzing the definition of heritage, it can be notably that heritage is a legal universality, not being capable of digression to pecuniary rights and obligations of its contents, heritage presenting the legal and logical consistency only in relation to its economic substance.[20]

The most important classification of assets is the movable and immovable assets (Article 536 of the new Civil Code), arising from the nature of the assets and the description of the law.[21]

Movable assets are those who have no fixed settlement and can be moved from one place to another, the legislature defining them in art. 539, in relation to immovable assets; they are those goods which the law does not consider real estate. In other terms, any asset that is not movable is understood to be movable. At paragraph (2) of the same Article, the legislature specify that electromagnetic waves, similar energy of any kind produced, captured and transmitted within the settlements of law, any person placed in service, whatever the nature their source, movable or immovable it is movable.

Movable assets can be movable by their nature, movable assets established by law and movable by anticipation.

While the art. 473 of the Romanian Civil Code from 1864, provided that movable assets by their nature are those that can be transported from one place to another, whether or not highly mobile, current legislator wanted to be all-inclusive, stating that all goods but not buildings, are movable.

The movable assets by their nature are those that can be moved from one place to another, either through its own dynamics (eg. animals), or with a foreign power.[22]

The new Civil Code does not re note the classification made by the Civil Romanian Code from 1864, but how ever, at art. 542, align. (2) stipulates that the other real rights – others than the ones regarding the movable assets as stipulated in align. (1) – are object, within the scope of law, to the measurements regarding the movable assets.

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[16] V. Stoica, *op.cit.*, pp. 67-68.

[17] **Idem,** p. 48.

[18] **Idem,** p. 49.

[19] **Idem,** pp. 49-50

[20] **Idem,** p. 54.

[21] to be seen G. Boroi, C.A. Anghelescu, *op.cit.,* pp. 75 – 86.

[22] Civil Code of Quebec provides in Art. 905, that are movable assets the things that can be transported, either move themselves or through a foreign force that moves.

It may seem that the current legislation distinguish only the movable assets by their nature and movable assets by anticipation. However, the heritage rights which are subject to the regulations relating to movable assets are movable assets just as the law stipulates, thus entitles us to affirm that there are movable assets according to the law and these are all the rights relating to a movable work, meaning real rights over the movable assets, debt rights and legal proceedings relating to mobile.[23] These are exactly intangible assets, as referred in art 535 of the new Civil Code.

Movable assets by anticipations are the assets considered immovable by their nature, meaning incorporation, which become movable if they are separated off the substance and such assets have the feature of movable assets only in the relations between the parties that previously created the anticipation because only these parties considered the assets movable by their agreement, having in view the future movable quality of those assets.[24]

Article 540 of the new Civil Code refers to the wealth of any kind of soil and subsoil, fruit still unpicked, plantations and buildings built in the ground, all these become movable in advance, by anticipation if, by their will to relate to their individual nature having in view their detachment, and concerning their opposability towards third parties is necessary to subscribe the assets referred to in Paragraph 540. (1) in the land registry.

Regarding the movable assets one can notice that the legislature recognizes the existence of real assets by nature, without naming them such, but provides in art. 537 that immovable land, springs and streams, plants attached by the roots, constructions and any other works set in the ground permanently, platforms and other facilities to exploit the submarine resources located on the continental shelf and everything incorporated in them, naturally or artificially.[25] Part of the doctrine nominated them permanent[26] real assets. We prefer to call, even in the absence of a denomination given by law, immovable assets by their nature, as expression dedicated and comprehensive.

Paragraph 538 (1) appears to be an innovation of the legislature and it refers to *assets that remain or become immovable*. It is about the materials provisionally separated from a building when it is envisaged the use of them to be reincorporated into another building, provided they are kept in the same form and integral part of a building that are temporally separated from the building but are intended to be reincorporated in that building.

In connection with this formulation of the legislature, one may observed, first, that for remains immovable assets, separate building materials must be kept in such a state only temporarily, provisionally, the owner intending to reuse all materials for that building or - we think - for another building.

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[23] T. Pop, P. Cosmovici, Civil law treaty. Vol. I. Overall part, Academiei Printing house, Bucharest, 1989, page 86;

[24] I.P. Filipescu, A.I. Filipescu, *op.cit.,* p. 45; P. M. Cosmovici, *op.cit.,* p. 88.

[25] Article 900 of the Civil Code of Quebec provides that funds of land, buildings and structures which are permanent and everything that makes part of these, and so are considered and vegetation and minerals as long as there are separated or extracted from the fund, and fruits and other products of the soil can be considered movable assets within the acts whose object they consist.

[26] A. Dobre, *op.cit.,* p. 87.

Secondary, they remain immovable assets only if they are kept in the same form, hence, if the owner alters their form or shape by his will, or changes following passage of time and weather interfere, the immovable assets become movable.

Thirdly, it is interesting to note that the integral parts of a building if they are temporarily detached from the building; they remain immovable assets only if they are intended to be reintegrated. In this case, the legislature has not provided such detached parts should be kept in the same shape to be regarded as immovable assets. The coerciveness regarding the maintaining of the same form of the immovable assets in order to be further considered immovable assets, even after they were separated from building, materials remain only on the material, while in the integrated parts of a building, temporarily detached from it, to be reinstated, however they can be processed and will be regarded as immovable assets. The difference in legal status, in our opinion, is not justified, especially since, sometimes is very difficult to distinguish between what the legislatures call *material provisionally separated from an immovable asset and integral parts of a building*.[27]

Paragraph (2) of the same article provides that for the materials to be used instead of old ones become real assets when the owner has previously decided for such a purpose.

In our opinion assets whose legal situation is governed by Art. 538 of the new Civil Code may be called immovable by destination, although the legislature does not denote them so.

Without going into details regarding the legal importance of the distinction between movable and immovable assets, we state that they are subject to different legal regimes, namely, buildings can be mortgaged, and movables can be pledged, the advertising regarding estrangement is applicable, and the territorial competence regarding the shares having as object an immovable asset belongs to the local jurisdictional courts where the assets are, in accordance with art 13 of the present Code of Civil Procedure, whereas, if the object is a movable asset, the competent court will be the one of the defendant domicile, according to art 5 of the Code - *actor sequitur forum rei.*[28]

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[27] According to the provisions of art 902 of the Civil Code of Quebec, the integrated parts of an immovable asset that are temporary detached from the asset, preserve the immovable character, if this parts are meant to be reincorporated

[28] New Code of Civil Procedure - Law no. 134/2010, published in the Official Journal, Part I, no. 485 of July 15, 2010 states in art. 105 par. (1), the summons application is lodged to the court in whose jurisdiction the defendant resides or is located, unless the law provides otherwise.

In accordance with Art.111 Paragraph (1) section 4 of the Code, in addition to the courts under Art. 105-110 are considered competent courts, the courts of the jurisdiction where the asset is located, for applications that stem from a report of the building lease, and under section 5, the court where the asset is located for the tabular services claims in tabular adjustment or justification cases.

Also, according to Art 114 of the new Code of Civil Procedure, requests relating to immovable assets shall only be placed before the court in whose jurisdiction the asset is situated and when the asset is located in the jurisdiction of several courts, the claim must be brought on the defendant's domicile or residence, if it is in any of these constituencies, and otherwise, to any of the courts in districts where the immovable asset is located.

Also, the community legal regime of the spouses, the distinction between movable and immovable asset is important because, in accordance with Art Paragraph 346. (1) of the new Civil Code, acts of estrangement or encumbrance of real rights covering the common assets can not be concluded without the consent of both spouses, and the movables under par. (2), either spouse can dispose alone, for pecuniary interest regarding such assets whose estrangement is not subject to such formalities of advertising.

Within private international law we point out differences in the legal status of movable and immovable assets. Thus, real estate assets are subject to law applicable in their location site - *lex rei sitae* and movable assets are subject to private law - *lex personalis*, which may be national law - *lex patriae* - or domicile law - *lex domicilii*.

It also should be highlighted that the legal movement of movable assets is subject to more stringent requirements than those regarding the movable assets, monitoring and enforcement differ in case of immovable assets comparing to the movable assets, and the acquisition of ownership of immovable assets is subject to acquisitive prescription extra-tabulation or tabulation, under art 930-934 of the new Civil Code, while the operating rule for movable assets is settled by Paragraph 937 art (1) of the Code.

Apart from movable and immovable assets, art. 541 of the new Civil Code governs the de facto universality, as a whole of the assets belonging to the same person, with a common destination determined by its will or by law, fact that does not preclude the possibility that components of the universality heritage may actually be subject to legal separated acts or relations.

Universality does not imply the existence of an asset and a liability accordingly, but they are constituted by connecting some active elements that could be autonomous, but, to some extent with a common purpose and a particular legal regime.[29]

Regarding the leasehold it was noted that in case of the universality, each component has its own legal nature, being able to form the subject of a separate agreement or the subject of a separate assignment, but these items can be viewed in their totality, for any particular purpose, as a single whole, subject to different rules from those governing each component and having a distinct value, sometimes above the forming elements.[30]

As assets may or may not be replaced in executing a debt, art. 543 of the new Civil Code distinguishes between fungible assets and non fungible assets, the fungible assets being determined by number, measure or weight, allowing some to be replaced by others in fulfillment of an obligation. Non fungible assets are those that can not replace each other in fulfillment of an obligation.

These regulations, according to par (3) of the same article, applies by similarity to awning action, boundary establishment, actions regarding the restriction of immovable heritage and the judicial division of a building when the joined possession does not result from succession.

[29] P.M. Cosmovici, **Civil Law. Real rights. Liabilities. Legislation,** All Printing house, Bucharest, 1996, page. 4, the author quoting R. Gary, **Essai sur les notions d'universalité de fait et d'universalité de droit dans leur état actuel,** Thèse, Bordeaux, 1931.

[30] P.M. Cosmovici, op. cit., p. 5.

Fungibility depends on the will of the parties, so that, according to par. (2) of Art. 543 of the new Civil Code, an asset that is fungible in nature can be considered fungible.

Correlation of fungible assets and non fungible assets, on the one hand and consumable assets and non consumable, on the other hand, lead to establishing the rule that consumable assets are fungible, indicating that fungibility depends on the will of the parties, while the possibility to consume them depends on the nature of the assets; there are situations when the parties of a legal relation may provide that a legal consumable asset to become fungible.

It was noted that fungibility depends on the will of parties, while the possibility of consuming the assets depends more on the nature of assets.[31]

Fungibility is an equivalence relation between two or more generic type of assets, by which one can be replaced by another in the fulfillment of an obligation.[32]

The legal importance of the distinction between fungible and non fungible assets lies in the release of debtor's obligation in the sense that the debtor may, in the case of fungible assets, pay his debt with fungible asset and in situation of non fungible assets, the debtor must pay only with the individually determined asset. . In this respect, according to Art 2164, Paragraph (1) of the new Civil Code, in the absence of contrary stipulations, the borrower must repay the same amount and quality of goods which he received, whatever their price increase or decrease, and in accordance with paragraphs (4) thereof, if it is not possible to return assets of the same nature, quality and the same amount, the borrower must pay the value of the assets at the moment and where refunds should be made.

The distinction between consumable assets and non consumable assets is made by legislature within art. 544 of the new Civil Code, stating that consumable movable assets are those whose regular use involves estrangement or the consummation of their substance and a consumable asset by its nature may become non consumable, if its usage is changed through a legal act. Consumable assets are considered those that at first usage can not be used without consuming their substance or, legally by estrangement.[33]

The classification considers the nature of the assets, without depending on human will, but exceptionally, the classification in question may depend on the will of man, by that a consumable asset may be considered non consumable and vice versa.

The legal importance of this classification is that the object of usufruct right can be non consumable assets (according to art. 706 of the new Civil Code, any movable or immovable, tangible or intangible asset, including a patrimonial mass, a universality of fact or a share thereof can be given in usufruct). Another object of usufruct may be the non consumable assets and in this situation the law states the

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[31] I.P. Filipescu, A.I. Filipescu*, op.cit.,* p. 48.

[32] I. Rosetti-Bălănescu, O. Sachelarie, N. Nedelcu, **Main principles of the Romanian civil law.,** Bucharest, 1947, page 160; G. Luțescu, **General theory of the real rights,** Bucharest, 1947, page 96; A. Ionaşcu, **Civil law. Genaral part**, Bucharest, 1963, p. 66; A. Pop, Gh. Beleiu; **Civil Law, Bucharest University**, 1975, p. 208.

[33] I.P. Filipescu, A.I. Filipescu, op. cit., p. 47.

presence of what is called quasi-usufruct (under art. 712 of the new Civil Code, if the usufruct includes, among others, and consumable assets such as money, grain, drink - the list is illustrative – the owner of the usufruct has the right to dispose of them, the obligation to return assets of the same quantity, quality and value or at the owner's choice, the value of the assets at the date when the usufruct settlement ceases).

Since art 1779 of the new Civil Code provides that all assets, movable and immovable, may be the subject of the tenancy, if a legal provision or by their nature the assets do not reveal the contrary, results the there can be situations of loan of non consumable assets (loan use or loan) and the loan having as object consumable assets (a consumer loan or mutuum).

Article 545 of the new Civil Code provides the classification of assets in divisible and indivisible assets; these last being assets that can not be divided without changing their destination. By legal act a divisible asset by its nature can be considered indivisible.

To classify an asset as divisible or indivisible, one can use either an objective criterion, represented by the natural qualities of the asset or a subjective criterion, represented by the intention expressed in the act legal.[34]

The importance of this classification stands for partition, meaning that the divisible asset may be divided into its materiality and indivisible asset can not be shared. According to Art 676 of the new Civil Code, partition of joint heritage is made in nature, proportional with the shares of each owner, and if the heritage is indivisible or not conveniently shareable in nature, the legislature provides that the property is assigned to one or more owners, at their request, in exchange for any compensation, or proceed to sell the heritage as established by the owners, and in case of misunderstanding between them, at public auction, by law, distributing the cost among owners in proportion to the share of each of them.

Also, if a plurality of debtors obligation and its purpose is divisible, then the obligation is divisible, each debtor is discharged by paying the incumbent part. In situation the good is the object of an obligation with plurality of debtors, each debtor it to pay for the entire debt.

Finally, the new Civil Code, art. 546 distinguishes between primary assets and accessory assets, stating the asset that has been designed in a stable and exclusive way for the economic use of another asset, is accessory asset as long it satisfies such an usage, and the common destination may be determined only by the owner of both goods, so it is necessary that both assets have the same owner and this must establish a destination relation regarding the assets.

Unless otherwise stated, accessory assets are to be considered the same way as primary assets, including in cases of estrangement or encumbrance of primary assets.

It is interesting to notice the provision settled by par (4) of Art 546, stating that cease of the accessory quality of an asset can not be invoked against a third party who had previously acquired the heritage rights relating to the primary

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[34] T. Pop P. Cosmovici, **Civil Law Treaty. Vol. I. General part,** Academiei Printing house, Bucharest, 1989, page 90.

asset, and his rights regarding the asset - according to par. (6) - can not be violated by turning it into an accessory asset.

Temporary separation of an accessory asset from the primary asset does not remove the main quality, but difficulties regarding the temporary separation of the asset may occur.

The primary or accessory feature of an asset is resulting from its natural qualities, but also from the human will.

The legal importance of classifying assets in primary and accessory is that, unless the law determines otherwise or the parties have agreed otherwise, the principle stated by the *accesorium principoale sequitur* adage, the fate of an accessory asset fallows the fate of a primary asset.