



## LEGAL ANALYSIS OF BANKNOTES' NATURE IN UZBEKISTAN

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### Annotation

The article examines the legal nature of money, its definition, and its main features. In this material, a comparative analysis of civil law rules in the USA, Kazakhstan, and Russia is carried out. The article focuses on the evolution of money and its modern understanding. The paper indicates that legal and economic theories take different positions about money. The author points out that money is an economic substance and at the beginning of its evolution was bearer security. The paper describes that money is an asset in Uzbekistan. However, the law does not provide a full range of rules of property to money. The author notes that economic theory expresses different positions where all should be considered as money if they provide the functions of money.

**Keywords:** money, bank, property, claim right, banknotes, asset.

### Introduction

According to Article 81 of the Civil Code of the Republic of Uzbekistan, money is an asset. Civil law does not define the form of money in cash or non-cash form. It should be noted that the civil code of Uzbekistan defines money as an asset and concerning that, I consider it necessary to carry out a legal analysis.

In the civil law of the Republic of Uzbekistan, an asset is considered an object that has a material and bodily substance. Things can exist in solid, liquid, and gaseous forms. It is noted that the main purpose of an asset is to satisfy certain needs of people and society. However, money has a special position in this category, which perform an intermediary function in obtaining material values (housing, food, clothing, etc.). It can also be noted that money, along with the position of an asset, is considered the same as property, which has a wider meaning and application [1, P .238]. It should be noted that money is accepted and understood as an asset in civil law, and outwardly it looks like an asset. However, money has consumer power by legislative regulation of legal means of payment. Without such legislative power, banknotes are not different from paper with a design. The presence of property rights in a banknote is the main distinguishing feature in comparison with other objects that are recognized as an asset.





This circumstance explains the special position of cash, which is very close to the concept of an asset, on the one hand, but differs from the traditional understanding of an asset, on the other hand.

Uzbek law does not separate the concepts of non-cash and cash compared with Russian legislation, and in addition, does not provide a legislative definition of such phenomena. Interpreting the word money by default as stipulated in the Civil Code of the Republic of Uzbekistan, it can be argued that money and everything that is included in this concept can be attributed to an asset. Therefore, cash and non-cash money are an asset.

Article 94 of the Civil Code of the Republic of Uzbekistan indicates that the currency of the Republic of Uzbekistan is "sum". The monetary unit sum itself received the status of a means of payment on the territory of the Republic of Uzbekistan from July 1, 1994, and was released into cash circulation in the form of banknotes (bank bills) of the Central Bank of the Republic of Uzbekistan [2]. In addition, the binding force of the sum is expressed in the fact that all settlements and payments on the territory of the Republic of Uzbekistan are carried out in the currency of the Republic of Uzbekistan [3].

The Central Bank of the Republic of Uzbekistan has the right to determine the denominations of banknotes of the Republic of Uzbekistan and organize its cash circulation. The Central Bank of Uzbekistan recognizes that banknotes in circulation are its unconditional liability and all its assets act as collateral. Also, the Central Bank of the Republic of Uzbekistan does not consider the ratio between gold and sum [4].

Banknotes (cash) of the Central Bank of the Republic of Uzbekistan can be credited to accounts, in deposits and be the subject of transfer according to Article 42 of the Law of the Republic of Uzbekistan dated December 21, 1995 No. 154- I "On the Central Bank of the Republic of Uzbekistan" (New Edition). It should be noted that cash, credited to the account, changes to a new form - non-cash.

The volume of cash in circulation is 23.5 trillion soums or 22% of the total money supply as of May 1, 2021, according to the statistics of the Central Bank of the Republic of Uzbekistan, where the money supply consists of cash and deposits [5].

Before the creation of money, society was of course based on barter. A peasant who wants to buy wheat must have, for example, pottery to exchange for wheat. These were the first forms of transaction costs [6, P.3-6].

Because of the difficulty with the turnover of goods (barter), people were able to answer this problem by inventing money. The original forms of money included animal skins, livestock, slaves, beads, shells, corn, olive oil, tobacco, straw mats, and salt [7, P.115]. These things had an exchange value because they were independent and universally





desired values and functions. In the nineteenth century, scientists took the position that anything used as money must have independent utility and value, and it is impossible to introduce money if such substance has no direct value [7, P .115]. After a while, societies narrowed the money to precious metals, especially gold and silver. This form of money was named "voiced coin", which recognizes any monetary gold or silver, whether in the form of ingots or coins [8].

For centuries, gold and silver have been the main medium of exchange throughout the world, and economists have considered only specie as money. William Blackstone explained the desirability of gold and silver as money. The scientist points out that money is a universal means or a general standard against which the value of all goods can be determined [9, P .266]. The prevalence of gold and silver as money is reflected in the language. The French word "money" is translated as "argent", which is identical to the word silver. However, it was gold that took the main place in the development of international money circulation [7, P .117].

The use of gold as money led to the use of the well-known "gold standard", which was developed in Great Britain in the first half of the 19th century. Under the gold standard, the country's currency operating under this standard was directly convertible into gold. This means that each country's gold standard currency had a fixed exchange rate against all other gold-standard currencies, this rate is fixed by reference and conversion into gold. By the 1870s, most of the world's major economies adopted the gold standard and managed international monetary relations on that standard until the economic crisis as a result of World War I forced the abandonment of the gold standard. The disadvantage of the gold standard is the impossibility of state control of the monetary system and the standard depends on the production and discovery of gold [7, P .119].

Going back to before the advent of the gold standard, gold has gained universal recognition because of its unique qualities. However, there are disadvantages of gold, it is quite heavy to transport, and the owner must ensure the safety of the gold. In response to these problems, jewelers have offered gold storage services. Jewelers provided receipts (certificates of deposit) that could be used as a means of payment since they were redeemable in gold if demanded. Thus, such paper began to be used as money because it symbolized the real asset [7, P .119].

The banknote acted as the main means of payment in the capitalist countries from the 19th century until the First World War. In the United States, banknotes acted as the main means of payment until the spring of 1933. Legal analysis of the role of banknotes as a means of payment is of great importance for determining the legal nature. A bank bill or a banknote is recognized as a bearer money security issued by a bank, which





determines the holder's right to receive a certain amount of specie from the bank (the gold or silver standard is applied, respectively). Due to the fact that such a document is considered bearer security, it can be freely transferred to another person. It can be noted that in this way the function of money as a means of circulation is performed and in fact, means the transfer of the assets to such document is entitled. First of all, we can note the application of the norms for the protection of bona fide purchasers of banknotes [10, P .193]. After that, legal regulation also overtook the right of claim of the banknote holder, according to which the court did not accept any claims and offsets of the banknote issuer, in our case, the central bank [10]. In the English system of law, a banknote is considered a bearer bill, that is, a promissory note [11]. To recognize the validity of a banknote, as in the case of a bill of exchange, it was required to issue by issuing bank to the first acquirer, and in the event of theft, such a banknote was no longer recognized as a banknote [12, P .93]. It is noted that according to the decision of the Supreme Court of the State of Virginia in the United States on June 6, 1945, it was established that if the heir refuses to receive property in the form of an asset, then the money in the bank is subject to transfer. This circumstance states that acceptance of a bill in exchange for cash means the absence of the generation of innovation and the repayment of the debt. The acceptance of the banknote by the bank did not mention payment and did not replace it. In the process of court decisions execution, the received banknotes were transferred to the issuer for exchange and subsequently transferred to the plaintiff to fulfill an obligation [10]. This rule of exchanging a banknote for an asset (gold) was valid until 1936 in the United States. During the Great Depression, US President Franklin Roosevelt adopted Executive Order No. 6102 of April 5, 1933, according to that, all persons (individuals and legal entities, as well as foreign entities) were obliged to send all gold in bars and coins and exchange at any bank before to May 1, 1933, at \$20.66 per troy ounce [13]. A slightly different position was taken by the French concept, banknote cannot be considered a currency unless a forced exchange rate is provided. This point of view was explained by the fact that the banknotes issued by the Bank of France should not be aimed at financing the state budget. Some French scientists adhere to the position of the impossibility of changing a coin from an intangible value into a material value with by forced exchange rate [10]. The judicial practice did not allow vindication, including in the event of theft or loss of banknotes, and did not recognize the application of money regulations in relation to banknotes in the German legal system too [14, P .397]. At the same time, the transfer of a banknote to a creditor was considered a payment of a debt. With the abolition of the practice of exchanging banknotes for gold and the establishment of payment power in relation to banknotes, as well as the start of using them to replenish the state budget,





banknotes lost the status of security and transformed into ordinary paper money [10, P .194].

The rules of vindication claims do not apply to money. The owner has the right to reclaim property from a bona fide purchaser in case of loss, theft, or disposal against his will, or received free of charge according to part 1 of article 229 of the Civil Code of the Republic of Uzbekistan. However, the last part of this article of the Civil Code states that money is not subject to demand in any case from a bona fide purchaser. As we pointed out above, the Uzbek civil code determines that money is an asset, that is, an object of the material world, and cannot be claimed by a bona fide purchaser. Consequently, this given circumstance once again proves the special status of money in civil law. However, what about the funds that are in the current account and cannot meet the criteria of an asset.

During the creation period of banknotes, the rules of a promissory note had a practical application. Promissory note, in accordance with Article 740 of the Civil Code of the Republic of Uzbekistan, is understood as an unconditional obligation to pay the sums of borrowed money. The promissory note is recognized as a security, but not an emissive one [15]. According to Luntz's point of view, it is seen that a check and a promissory note have a large circulation function, but they cannot act as money, much less replace them [10, P .195].

The German Civil Code takes the position of the possibility of accepting a bill as a fulfillment of an obligation. In accordance with the Code, it is provided that the obligation may be terminated if the creditor has accepted another performance from the debtor [16]. This option of resolving and terminating the obligation is not a novation of debt.

The next important aspect of money is the problem of property rights. Above, we studied the evolution of money, and how money changed from simple things to gold and then to paper. In the same sequence, it is necessary to study the legal evolution of the system of property rights in relation to money.

Before the obligatory exchange rate and nominalism were introduced, money did not differ from ordinary assets. To complete a transaction, one private person provides goods, and another private person receives gold with a certain fineness and weight in return. In such a reality, there is still no mandatory exchange rate determined by a third party, that is, not by the parties to the transaction [17, P .94]. The cost of such money was determined by their material characteristics, as they have consumer value. Such money did not have specific features in the legal sense of the right of ownership, since it did not differ much from the asset and did not give rise obligations [18, P .26].



Since the establishment of a mandatory exchange rate for goods, the legal regime in relation to money as an object of civil rights has changed a lot. The state began to mint coins with a nominal value and created a monetary unit. Through this, the state introduced special rules in relation to money and, accordingly, subjective rights in relation to money also changed [19, P .74-84]. The peculiarity of money was that the material and value features were the main conditions in defining them as money, and with the transfer of money the payment power was transferred, and property rights were extended only in relation to the material - a coin [20, P .101].

With the establishment of a forced exchange rate, the owner was deprived of the right to create or change a coin, and its denomination now depends only on the state. In modern coins, for example, in Uzbekistan, the coin does not depend on the raw materials and other materials made from. Thus, it can be argued that the owner cannot have absolute power over money, compared to the asset. Any natural and legal person can only own the material, but cannot own its payment power. Thus, with the establishment of a forced exchange rate, money ceased to be considered an asset [20, P.107].

The ownership right over an asset has one of the main places in the discussion about money. The presence of ownership right means precisely the economic power over the object [21, P.29]. The next distinguishing feature is that money does not meet the criteria of ownership in relation to an asset [22, P.333-334]. Visually, of course, since banknotes are objects physically present in circulation. However, ownership of a banknote does not mean ownership of a phenomenon like money. The ownership of the banknote holder is directly related to the payment power of the banknote, and not to the material on which the banknote was printed.

We noted above that the real-law mechanisms cannot be applied to money as a negatory action and vindication claim. Possible means to protect the rights and interests may be a claim for the recovery of unjust enrichment and a claim for the recovery of damages (actual damage and lost profits [23]). The cost characteristic of money is predetermined by the state, indicating the numbers on the banknote. Money is an object in reimbursable contracts, and the payment power of money is manifested in monetary obligations.

Money has a special position in collateral law. According to part 1 of article 264 of the Civil Code of the Republic of Uzbekistan, it is established that a person transfers property or rights to secure an obligation to a counterparty. Article 267 of the Civil Code of the Republic of Uzbekistan determines that any property, including property and property rights, can be the subject of a pledge. In this context, it can be understood that money (cash and non-cash money) can be the subject of collateral.





A feature of the pledge is the right of the creditor to receive satisfaction from the value of the provided pledged property in the event that the debtor fails to fulfill the obligation [23]. Selling money from a public auction is an impossible process. Consequently, due to the special legal nature of money, especially non-cash money, it is seen that it is impossible to apply the rules of the subject of the pledge. In the Russian Federation, where non-cash money is considered a property right, there is a position of the possibility of using non-cash money as a pledge [24, P .27].

As we pointed out earlier, economists take a different position and accept any phenomenon that performs the function of money. According to Sklovsky, obtaining the status of a thing of civil rights with money is the result of tradition [25, P .148].

## Conclusion

The author intends to describe the legal rules of Uzbek civil law concerned banknotes. At the beginning of evolution, barter could not satisfy the needs of people. That's why they created some sort of things that acted as money. Further money was expressed in gold and silver for a long time, which forced the creation of the gold standard. Nowadays, money is not convertible to gold or other property.

In addition, money does not answer the main requirements of the property, such as the object of negatory action or vindication claim. For example, money cannot be claimed from bona fide purchaser [26].

The author considers that it's necessary to elaborate on studies on the concept of banknotes in Uzbek civil law and provide clear identification of their legal nature.

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