

## MONEY AS A SPECIFIC LEGAL OBJECT

István Gárdos

**Who owns my money?**

*An examination of money under property law*

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Wolters Kluwer

A monograph by *István Gárdos* was recently published by Wolters Kluwer under the simultaneously apt and enigmatic title “*Who owns my money?*” [Kíé a pénzem?], defining the subject of the inquiry more closely under the subtitle “*An examination of money under property law*”.

We agree with Professor *Attila Menyhárd*'s observation, made during a conversation we had recently, that whoever broaches a topic of this kind is very brave to do so. Despite the fact that money is a constant factor in everyday legal relationships under civil law, neither legislation itself nor the literature on private law has devoted appropriate attention to it – at least not as far as its assessment under property law is concerned. The distinctive features of money under property law – even the very definition of money under property law – is somewhat lacking. Hungary's Civil Code fails to lay the foundations of money under property law, its provision which stipulates that the rules relating to things “must be applied appropriately” to money representing a kind of “nothing better” approach, which in a certain sense does not help, but only sows confusion. For this reason, the author vigorously attempts to elaborate – or, as he puts it, strengthen – money's “context in property law.”

It is beyond dispute that money – even without mentioning the difference between cash and bank money – remains a complex phenomenon. Lawyers and economists take different approaches to money, each with a differing focus in their way of thinking and a different perspective with regard to the dominant legal basis for their judgement of the regulations. The lines that follow here reveal the perspective of a civil lawyer, primarily giving voice to our concurring opinion that *an examination of the legal nature of money is not just necessary, but interesting and exciting.*

Money as a specific legal object and the features of civil law necessarily linked to money (primarily fungibility and consumptibility, mentioned several times by the author as features of property law also having an impact on obligations) sometimes create a situation where *property rights on money must be handled almost like the institution of the law of obligations.* In a certain sense the reverse is also true: the content of familiar institutions of the law of obligations changes, with its legal nature being assessed differently from the point of view of property law if the indirect



object of the legal relationship is money. The question thrown up by the title – Who owns my money? – is therefore not an empty one even in general terms, even less so in terms of the dynamics of the law of obligations in the context of a contractual relationship. In our view, therefore, the title is not a contradiction in terms, as the author modestly suggests in his introductory thoughts, but a precise characterisation of a complex legal situation.

Almost every chapter of Gárdos's book begins with the premise that the customary legal relationship under property law – generally assumed to be fixed in content – demands a *different kind of approach* as soon as money comes into question as the legal object. And indeed, the institutions of civil law function in a peculiar way at such times (we might say irregularly – as in irregular deposit, irregular usufruct, irregular lien, etc.), as the requirement for rigid discipline is quite simply untenable and/or may lead to uncertainty. Money tempts “subversive” thoughts: it is no accident that in the case of money, the ordinary rules of binding to an obligation alter (*Grosschmid*). This leads – at least in our view, which we feel the author would share – to an apparent loosening of the traditional institutions of civil law (not as a particularly new phenomenon) with respect to monetary obligations (or in the broader sense, legal relationships connected with money) – the safe handling of which, however, is the task of modern civil law.

Although the author – as he indicates in the subtitle to his book – has set the examination of money under property law as his objective, he cannot avoid discussion of the implications under the law of obligations connected with circulation of money in the broadest sense. These questions sometimes appear in the book under their own headings, and sometimes as digressions. It is indisputable that property law as it applies to money – despite the fact that Gárdos does not use this expression – is not static, but is a *pulsating, dynamic property law*, with opaque and overlapping boundaries not only in its operation but also in its legal structure. Moreover – as *Grosschmid* said of monetary obligations – it likes to regulate conditions according to its own rules and only secondarily draw on the common rules typical of the given legal relationship. Money – at least in our humble opinion – simply has no “circumscribable property law” applicable to it as to ordinary objects, which is attributable to its commercial nature, its function as a general measure of equivalence or value, and its fungible and “consumptible” nature under property law. When talking about money, the static approach applicable to things is also untenable because ownership of money, i.e. the presence of money among property, almost immediately demands an examination from the point of view of obligation (since “how it got there” or “why it is there” is not irrelevant), while at the same time – in keeping with the quote from *Grosschmid* chosen as the book's motto – the findings thus obtained are immediately transformed by the monetary obligation. An approach to money according to property law is consequently not

simple either. Our feeling is that the author may have sensed this particular aspect when he found the theme of examining money under *property law* likely to provide some exciting and valuable results.

Although the author devotes a short chapter in the book to points of connection with the law of obligations (*Money under the law of obligations*), the monograph is chiefly characterised by its regular linking of property law to the law of obligations. Given the topic at hand, this is perhaps inevitable. In the book the author makes several mentions of loans as the prototype of monetary obligations, which on occasions he also cites as the “root” of other money-related legal relationships. In support of the above notions, it may be sufficient to note that the evaluation of loans, which shift money “hither and thither” (by way of illustration, “in and out” of ownership and possession) is not simple either: whether we describe them as the type that transfers ownership (*dare*), or as obligations of use (*non facere*), is by no means immaterial from the point of view of the legal fate of the transferred money. Today the former approach – the nature of transferring ownership – is in fashion (the author also takes this as his starting point – albeit, in taking into account the specific nature of the legal relationship, by no means rigidly adhering to the axiom). However, this was not always the case: the aforementioned *Grosschmid*, an outstanding expert in civil law, noted that even a loan itself is nothing other than an irregular usufruct, at least “as far as the intention of the relationship is concerned.” And if we add the well-known definition of interest, whereby “interest is the countervalue of the temporary *use of someone else’s money...*” then instead of money that is owned, we see money to be returned (as it was only given for use); and yet, from the point of view of interest relations and the content of legal relationships, this is not a minor question.

*Gárdos’s* book presents viewpoints and approaches which receive insufficient attention – or no attention at all – even in scholarly works, or which, precisely because of a superficial attitude, do not allow us to discover the content to sufficient depth. For this reason, the book fills a gap in the legal literature and, although it is not easy reading, its conclusions may stimulate debate (or at least further thought), and certainly repay the time spent reading them.

*László Leszkoven*