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Abstract:

The contractual acknowledgment of a debt is widely recognised and applied in continental legal systems. However, there are great differences between them as regards the effects brought about by the above-mentioned legal act. One can distinguish three different legal models of the contractual acknowledgment of a debt. The distinction is made based on the effects such acknowledgment can bring about in certain legal system. First, the acknowledgment of a debt, as a stipulation in the Roman law, can create a new obligation, which is or is not independent from a prior obligation that is the subject of this acknowledgment (constitutive and abstractive or causal effect). Furthermore, there is also the type of the acknowledgment of a debt that does not create ‘new and (in)dependent legal obligation’, but that serves to settle a conflict. Both these subtypes can be classified as a substantive law model (I). This model has been applied in §§ 780 and 781 BGB (The German Civil Code). On the other hand, there is the acknowledgment of a debt that mainly impacts the civil proceedings – it specifically reverses the burden of proof or waives a party's pleas. This can be classified as a process law model (II). This model has been applied in the former Article 1132 CN (The Code Napoleon). The third and last model is based on both above-mentioned models and constitutes their combination (a substantive-procedural law model). It has been applied in Article 17 OR (The Swiss Obligation Code).

The aim of this paper is to analyse which of the above-mentioned models of the contractual acknowledgment of a debt has been applied in the Polish Civil Code. In particular, it discusses whether the parties to such contract are able to create a new obligation (constitutive effect) and whether it is an abstractive or a causal one. The paper also contains the analysis of the declaratory and causal acknowledgment of a debt which is referred to in the German legal

system as the Feststellungvertrag. It determines whether such subtype of a contractual acknowledgment is acceptable under the Polish Civil Code. Moreover, the paper also raises legal issues concerning the form and classification of the contractual acknowledgment of a debt and its impact on limitation.