

Abstract

Contractual penalty

The theme of this thesis is the contractual penalty. The contractual penalty is an ancient institute, a similar legal instrument was already known in Roman Law. In our territory an equivalent of the contractual penalty can be already found in municipal law in the 16th century. The fact that contractual penalty has been used for such a long time illustrates its doubtless importance and its necessity for Law of Obligations. Nowadays contractual penalty still plays an important role and it is frequently used in contracts.

The aim of this thesis is to analyse current legal regulation of the contractual penalty in the Czech Republic, including the relevant case-law and literature. The purpose is also to point out the difference in opinions about some particular issues or practical problems. The thesis focuses primarily on amount of the contractual penalty and a discretionary power of a judge to reduce an excessive contractual penalty. The thesis does not forget to deal with other topics relating to the contractual penalty.

This thesis consists of 11 Parts, some of these Parts are divided into the Chapters or Points. The thesis summarizes a historical development of the contractual penalty in its first Part. The second Part of the thesis concerns with a systematic classification of the contractual penalty in the Civil Code. The third Part deals with the issue whether the provisions regulating the contractual penalty in the Civil Code have directory or mandatory nature. The fourth Part is devoted to transitional provisions contained in the Civil Code and related to the contractual penalty. The functions of the contractual penalty are described in the fifth Part of the thesis. The sixth Part of the thesis characterises the essential elements of the contractual penalty, it is divided into separate Chapters which concern with e.g. a form of the contractual penalty, accessory nature of the contractual penalty or nullity and (in)validity of contractual penalty. The seventh Part devotes to amount of the contractual penalty. The eighth Part of the thesis closely deals with a discretionary power of a judge to reduce an excessive contractual penalty. The ninth Part summarizes the specificities of contractual penalty contained in the so-called consumer contracts. The tenth Part concerns with a relation between the contractual penalty and other legal institutes relating to the contractual penalty. The eleventh Part of the thesis contains a brief comparison between a legal regulation of the contractual penalty in the Czech Republic and a legal regulation of the contractual penalty in Switzerland.