

Security transfer of ownership

Abstract

The subject matter of this thesis is the security transfer of ownership as a means of debt security in the Czech Republic. Within five chapters, the thesis analyses the law applicable to the security transfer of ownership while considering the difficulties arising out of its interpretation that were identified by courts, experts and legal practice. The main purpose is to present the difficulties related to the use and interpretation of the security transfer of ownership in a critical manner. The first chapter aims to put the security transfer of title in the context of the law of obligations, to place it among other types of debt securities and to capture its substance. Subsequently, the thesis describes the roots of this type of debt security in Roman law and the evolution of the security transfer of title in the Czech territory. There is a comparative mention of the use of the security transfer of title in Germany and France at the end of the first chapter. The second chapter analyses the security transfer of title under Act No. 40/1964 Coll., the Civil Code and identifies problems related to the imperfect legislation. This chapter also analyses the case law that had fundamental impact on the interpretation of this debt security and that were reflected in the applicable law. The third chapter focuses on the analysis of the security transfer of title under Act. No. 89/2012 Coll., the Civil Code. The third chapter addresses the security transfer of title in a general manner aiming to deal with the general matters so that its conclusions could be used in the following chapters. Therefore, the third chapter analyses the contract establishing the security transfer of title, the termination, the realization and the alternative types of security transfer of title. The security transfer of title with suspensive condition is also analysed. The fourth chapter is crucial because it is fully focused on the particularities of the security transfer of ownership. In the scope of six parts, it strives to identify specific and problematic aspects of the security transfer of ownership arising from the nature of ownership. It addresses different types of the establishment of the security transfer of ownership and critically assesses the administration of the property during the security transfer under applicable law. Subsequently, the creditor's ownership components and his obligations as the temporary owner are identified and analysed. Then the debtor's rights and obligations are analysed. The fourth chapter also deals with the tax aspects of the security transfer of ownership and addresses its use in practice mainly in relation to consumer loans. The ultimate fifth chapter evaluates the applicable law and presents considerations *de lege ferenda*.

Key words: security transfer of title, ownership, debt security