

Roman law aspects of acquiring property in the Civil Code

Abstract

The thesis deals with the modes of acquiring ownership in the Czech Civil Code, Act No. 89/2012 Sb., as well as in the Roman law. The aim of this thesis is to find the Roman-law context in the modes of acquiring ownership regulated by the current Civil Code. The thesis is divided into three parts, the first deals with the ownership in general, the original modes of acquisition of ownership are analysed in the second part, and the derivative modes of acquiring of ownership in the third. The aim of this thesis is not to describe all possible modes of ownership acquisition in detail, but to briefly introduce them and compare the above-mentioned legislations. The Civil Code is based on principles of Roman law. It is, however, understandable that the current legislation is different from the Roman law, as the Civil Code was adopted almost fifteen centuries after the famous Justinian codifications.

The thesis describes the original modes of acquiring ownership. The original modes according the Civil Code include appropriation, discovery, natural accession (incl. accession of an immovable thing, alluvium and tear-off, and accession of movable things incl. acquiring fruits), mixed accession (incl. sowing and planting), artificial accession (incl. processing, mixing, structure and property encroachment), acquisitive prescription (incl. ordinary and extraordinary acquisitive prescription) and acquisition of the right of ownership from a non-entitled person. In this thesis, these above-mentioned modes of acquisition of ownership as according to Roman law are also explored. The biggest difference appears to be in the legal regulation of *accessio* (in Roman law meaning). In summary, the accession of movable things is not regulated very clearly in the Civil Code as compared to the Roman one.

Additionally, the derivative modes of acquiring ownership are also described. The thesis explores Roman law *mancipatio*, *in iure cessio* and *traditio*, and the transfer of ownership rights according to the Civil Code. The Civil Code deviates from the traditional two-phase transfer of rights, it is based on the transfer *solo consensus*. Nevertheless, the mentioned rule is violated in a special provision concerning the transfer of the ownership to several persons. The Civil Code allows the acquisition of the ownership from a non-entitled person which is in violation of Roman law principle *nemo plus iuris ad alium transferre potest quam ipse habet*.

Keywords: Acquisition of ownership; Civil Code; Roman law.