

# **Liability for defects of a share or shares of stock**

## **ABSTRACT**

This diploma thesis deals with the analysis of legal and contractual liability for defects of a share or shares of stock and with the definition of its qualities focusing on the legislation of the purchase. Due to the fact, that the number of executed transactions concerning a share or shares of stock reaches several hundred per year in the Czech Republic and the Czech legal system deals with the legislation of the share purchase agreement marginally, the number of disputes arises regarding their defects and the transferor's liability for them in practice. Therefore, I consider the topic of liability for defects of a share or shares of stock as a topical issue and appropriate to more detailed elaboration. Several research questions were asked e.g.: if a share of shares of stock can have the usual qualities or the usual purpose of use; if the qualities of the enterprise can be also the qualities of a share or shares of stocks directly by law; or if a shareholder of the business corporation can be considered as a consumer. In some issues that are controversial in legal theory or are not solved, or only marginally in the Czech legal system, a comparison with foreign legal doctrine, especially German and Austrian, is used to find solutions.

Following the initial chapter dealing with the legal nature of the share purchase agreement and the comparison with the legislation effective until 31<sup>st</sup> December 2013, attention is paid to the usual qualities of a share or shares of stock and their specific qualities or more precisely defects regard to the conclusions of settled case law. The diploma thesis discusses in more detail the issue if the qualities of the enterprise can be also the qualities of a share or shares of stocks directly by law, or more precisely defects of the enterprise can cause defects of a share of shares of stock, in more detail. The solution of this issue is outlined regard to the conclusions of German and Austrian legal doctrine and case law. Afterwards, attention is paid to the negotiation of the qualities of a share or shares of stock and other facts in the form of representations and warranties with a focus on representations relating to the financial statements of the target business corporation.

Within the analysis of legal liability for defects, the complaint process is examined regard to the specifics of a share or shares of stock, including the rights arising from a defective share or shares, especially a possibility of withdrawal from the contract and a reasonable reduction of the (purchase) price including the methods of its calculation. The position of a shareholder of the business corporation as a consumer is also discussed and if the share purchase agreement can be considered as a consumer contract. Furthermore, the institutes converging or competing with liability for defects are introduced, particularly compensation for damage, quality guarantee and

claims arising from error concerning the representations and warranties of qualities a share or shares of stock.

In the final chapter, there are presented the due diligence and the obligation to perform it in relation to liability for defects, contractual methods of limitation of liability for defects, namely *de minimis* clause, *baskets*, *caps* and time limits, and individual contractual claims arising from breach of representations and warranties focusing on the use of contractual penalty.

## **KEY WORDS**

liability for defects, share, shares of stock, qualities