

11. Shrnutí v anglickém jazyce (Summary in the English language)

Changes of the creditor and debtor in the legal relationship

This thesis is focused on the system of changes of the creditor or debtor in a legal relationship whereas the subject matter relates to the singular change whereby the transferee becomes the new creditor or debtor of a specific right or group of rights as opposed to the universal succession into the assets and liabilities of another.

As a basis for all further analysis, contractual assignment is thoroughly examined by comparing the interests of the involved parties and through its core structural components which are: the nature of assignment, the agreement on assignment, the object of assignment and the protection of the debtor. Examples of regulation of the given matter in laws of different states, such as Austria, Germany or the Czech Republic are provided and the thesis closely examines the rules on assignment in the Principles of European Contractual Law and the Draft Frame of Common Reference which represent the synthesis of legal comparative endeavor with the practical needs of the modern world. The economical relevance of contractual assignment is also argued and examples are provided of how the needs of the business community re-shape older rules in favor of the free circulation of claims within the markets. This is especially visible as regards distinguishing pecuniary receivables from others.

Consequently, the assignment by virtue of law, court decision or last will of the deceased is outlined. Furthermore, as their application and interpretation derives from the principles and understanding of contractual assignment, focus is put on comparing contractual and such non-contractual assignments. In a similar fashion, the transfer of debt which was within the European context theoretically construed by analogy with the assignment of a claim is described. Finally, the importance of combining contractual assignment with the transfer of debts is argued as this represents the legal basis for the change in the position of a contractual party.

Subject to adhering to the key principles necessary for the proper functioning of such legal institutions which are (i) the principle of “fairness of the assignment” protecting the debtor from any changes in the claim against him due to its assignment and (ii) the principle of “contractual liberty” providing freedom to all involved to pursue the disposition with their assets as they wish, the position is maintained that the specific legal regulations on assignment of rights and transfer of debts valid in whichever national or supra-national

legislation depends on whose interests are preferred and that there is not only one correct solution.