

Reservation as to estate inventory in inheritance law – key topics

Abstract

This thesis addresses selected issues of the reservation as to estate inventory in probate proceedings, specifically the limitation of the heir's liability for the decedent's debts. The issue was addressed in historical contexts and under the currently valid institute of the reservation as to estate inventory. The introduction of the thesis deals with the historical development of the institute of the reservation as to estate inventory, then pursues the issue from Roman inheritance law, through medieval development, Patent No. 946 Civil Code of Emperor Franz I (ABGB), and covers changes in the 20th century, namely the political influences of the communist regime in inheritance law of Act No. 141/1950 Sb., as well as a comparison with the Civil Code of 1964.

The thesis includes the current news and benefits brought by Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. Furthermore, this paper covers a comparison with Austrian inheritance law, particularly in the area of liability for the decedent's debts and their settlement in the remaining estate and after the acquisition of legal force for the transfer of the inheritance.

Chapter two of the thesis deals with the legal theory of the Civil Code No. 89/2012 Sb., describing the concept and purpose of the reservation as to estate inventory. The legal theory of the application of the reservation as to estate inventory is expanded by the results of empirical research, which show the significant influence of notary offices' procedures in informing heirs about the frequency of the application of the reservation as to estate inventory. Additionally, the situations under which the effects of the reservation as to estate inventory are cancelled are described in legal theory. This is also supplemented by real numbers of cases from current notarial practices. In the legal theory the conditions for the reservation as to estate inventory, the procedures for valuing assets and liabilities, settlement of community property, and the regulations of the decedent's estate inventory and other forms of reservation as to estate inventory are also analysed. This chapter concludes with an analysis of the creditors' convocation and the separation of the decedent's estate.

Third chapter of this thesis is the practical aspect of the matter. It critically evaluates the actual use of the reservation as to estate inventory and its perception by the professional public

across the Czech Republic. The main goal of the research was to determine whether (and to what extent and form) the reservation as to estate inventory is used in practice. The defined goal of the survey has been achieved. Furthermore, the following working hypotheses were established and processed: 1) the reservation as to estate inventory is rarely used in practice – this hypothesis was disproved, 2) the reservation as to estate inventory is poorly understood by the lay public and survivors – this was confirmed, 3) the recommendation of the notary has a significant influence on the decision-making of heirs (whether to use the reservation as to estate inventory) – this was confirmed, 4) the forms of preparation are not used evenly, with most of them being prepared by a notary – this was confirmed in the first part and disproved in the second, 5) in most cases, the reservation as to estate inventory does not benefit heirs – this was disproved.

Keywords

reservation as to estate inventory

liability of the heir for the decedent's debts

application of the reservation as to estate inventory and notary's duty of instruction