

Abstract - Set-off of claims

The topic of this diploma thesis is the analysis of the institute of set-off of claims. The thesis deals with valid regulation. Set-off of claims is one of the most common method of extinguishing liabilities, while the extinguishment of liabilities by set-off can only by certain conditions. The diploma thesis is primarily based on commentary literature and case law, using actual case law and also older case law, which is still valid today. The aim of the thesis was to create a comprehensive overview of the institute of set-off of claims and to point out some problematic areas.

The first chapter deals with the essence of set-off, especially prerequisites and admissibility. The chapter enumerates the individual conditions that the claims have to meet in order to be set off. These conditions are explained in more detail in the thesis. It is a necessary basis that must be known for the application of the set-off of claims institute. That is the basis for application in civil law as well as for application in other branches of law. For example in company law or bankruptcy law.

The next chapter deals with the set-off itself, i.e. how mutual claims are extinguished, in which moment the claims are extinguished and what are the effects of the set-off of claims. It is the most comprehensive chapter, as disputes may arise during the application of set-off, especially with regard to the effects of set-off on already incurred accessories of the claim or when the right to preferential payment with joint creditors was executed. The thesis should answer these questions. The question of whether to limit the possibility of set-off by the right to preferential payment, similarly to the case of fulfillment, remained controversial. I personally was inclined to the opinion that set-off should not be limited by the application of the right to preferential payment. I explained my opinion in thesis. An important part of the thesis is also what effect the statute of limitation has on set-off. When can statute-barred claims be set off and under what conditions. This question is dealt with in chapter three.

Chapter four deals with set-off in civil procedure. I.e. set-off of claims as a defense in proceedings. If a dispute goes so far that the parties resolve it through court, set-off of claims can be an important form of defence. Finally, in the last chapter, the limitations of the application of set-off of claims in insolvency proceedings are outlined. I only mention some view to the insolvency law that are useful to know if the debtor becomes bankrupt. Important moments during the insolvency proceedings are listed there, i.e. especially bankruptcy order of the debtor, reorganization and moratorium.

Keywords: set-off of claims, prerequisites for set-off, extinction of liabilities