

Trust in the context of inheritance law

Abstract

The subject matter of this doctoral viva voce dissertation are two fiduciary institutes brought into Czech private law by the new Civil Code effective from January 1, 2014 – i.e. the Trust Fund and the Trust Succession (Fideicommissary Substitution). The dissertation contains an analysis of the legislation in force applicable to both institutes concerned against the background of the historical development of fiduciary relations and a comparison of foreign legislations applicable to trust and fideicommissary substitution. The institute of Trust Succession has returned to Czech law after fifty years. In the case of a trust fund, which mixes elements of property and contractual law, it is the implementation of the traditional Anglo-Saxon legal institute into the Continental legal environment, which in itself brings a number of hermeneutical and application challenges. These challenges are highlighted by the concept chosen by the Czech legislator, which consists in following the Quebec model and constituting a depersonalized property allocated for a certain purpose. The focus of the dissertation is to confront the legislation governing the aforesaid fiduciary institutes with the provisions of the applicable inheritance law, in particular from the point of view of the planning and control needs of the intergenerational transfer of property. Special attention is paid to the institute of the Trust Fund established by the disposition of property in case of death, to issues associated with legislation on the protection of statutory heirs and to issues relating to the admissibility of changes to the Trust Fund after the establishment thereof. The author generally welcomes the enrichment of Czech law with the fiduciary institutes in question. In his dissertation, however, he identifies and seeks answers to the open questions surrounding this issue, which he also encounters in his practice as a lawyer. In the final part of his dissertation, the author considers which of the outstanding issues complicating current legal practice and reducing the use of the fiduciary instruments in question can be left to their natural development and clarification by future case law, and which problems rather call for a legislative solution.

Key terms:

Trust

Forced heirship

Beneficiary