

Abstract

Title: Business Share in Joint Ownership of Multiple Individuals

The purpose of my thesis is to analyse a business share in joint ownership of multiple individuals. This paper is composed of four parts, each of them dealing with a different variation of the business share in joint ownership.

The first part of this work is concerned with a legal interpretation of Section 114 paragraph 3 of the Commercial Code which, inter alia, sets forth that one business share may be held by more than one person. It introduces basic terminology that will be used throughout the work. It concludes that there are three variations of the business share in joint ownership. The first of them is the business share in co-ownership under Section 114 paragraph 3 of the Commercial Code (joint business share in the stricter sense); the second is the business share in matrimonial (community) property pursuant to Section 143 paragraph 2 of the Civil Code; and the third is the business share in matrimonial (community) property under Section 114 paragraph 3 of the Commercial Code (joint business share in the broader sense).

The second part deals with the joint business share in the stricter sense. It evaluates mutual legal relationships between co-owners, and legal relationships between the co-owners and a limited liability company. It also refers to the legal principle that each limited liability company member may only have one business share (unity-of-the-business-share principle) and tries to perform an assessment of this principle in broader correlations. Possible solutions to the termination of the legal relationship between the co-owners of the business share by a mutual settlement and/or by a court settlement, together with the question of whether the ownership interest in the business share can be subject to execution of decisions and whether it can be used as a lien (pledge), are discussed at the end of this section.

The third part concentrates on problems resulting from the business share in matrimonial (community) property under Section 143 paragraph 2 of the Civil Code. It discusses the evolution of the question of whether the business share in a limited liability company belongs to matrimonial (community) property. It further focuses on a landmark ruling of the Supreme Court which held that the business share in the limited liability company belongs to the matrimonial (community) property if it was acquired from the property shared by both spouses. This section extends legal reasoning of the Supreme Court. Further, it specifies how to evaluate the price of the business share for the purposes of the settlement of the matrimonial (community) property. It also provides its readers comparison with the French solution of the (business) share in the matrimonial property (régimes communautaires). Some difficulties of the settlement of the business share in the matrimonial (community) property within the inheritance proceedings are also discussed.

The last part examines the business share in the broader sense. It highlights some interesting legal correlations connected with this variation of the joint business share.