

## ABSTRACT

This diploma thesis [in the master's course], drawn up at the Faculty of Law of Charles University in Prague, deals with the **principles of the law of inheritance in Bohemia prior to its codification in 1811**. Although inheritance law is one of the oldest branches of law, and was very thoroughly developed in ancient Roman law, in our territory it actually started to develop some more only after the Hussite movement. That is due to the fact that in the Middle Ages, the prevailing concepts were the ruler's right to *bona vacantia* and family indivisible ownership [“rodinný nedíl” in Czech], both of which did not really make it possible to pass estate from the deceased to their heirs.

Therefore the aim of the thesis is to examine and gain a deeper insight into the historical development and historical contexts of the law of inheritance in our territory, which had preceded its modern form that was first codified in *Allgemeines bürgerliches Gesetzbuch* [the General Civil Code], which accepted the structure of the Inheritance Patent of Joseph II in 1811.

Part One of the thesis, Introduction, briefly discusses the law of inheritance as a specific element of legal science, the principles of inheritance law, and inheritance conditions and titles.

Part Two, Excursion into History – Inheritance in Roman Law, describes the principles of ancient Roman law that were winding through the entire historical development both in our territory and in other European countries. Modern legal systems of a number of European countries have been built on the foundations of Roman law principles, which also form the foundations of the new Czech private law legislation that will come into force on 1 January 2014.

Part Three of the thesis, The Legal System in the Middle Ages, examines the medieval legal environment, which was completely different from the system as we know it today. The medieval legal system was based on the principle of personality of law, according to which different legal rules applied to different groups of persons. The determinant element was the person's membership of an estate – a social class or a certain tribe or region. This part of the thesis contains a description of the oldest

Slavonic customary law systems that preceded the medieval law. It is followed by a discourse on the system of medieval law, in which the nobility was governed by *Landrecht* [law of the Land] (law of the nobility), burghers had their own municipal law and the canon law applied to the clergy. Vassals were subject to manorial power and their relationships were governed by the law of allegiance [to the lord]. This part also describes indivisible ownership as a fundamental concept of medieval property law and the concept of *bona vacantia* as a sovereign right of rulers throughout medieval Europe. An important breakthrough in the Czech legal system was the Renewed Land Ordinance issued in 1627 and 1628 for Bohemia and Moravia, respectively, as amended by Declarations and Amendments of 1640, which laid down the ruler's absolutist power and significantly influenced all private law, including law of inheritance. Attempts to consolidate law for all social classes were made since the mid-18th century. The General Civil Code of Joseph II, promulgated in 1786, was based on natural law. The complete codification of the civil law and consolidation for all citizens *pari passu* took place in 1811, when the Austrian *Allgemeines bürgerliches Gesetzbuch*, which accepted the structure of the Inheritance Patent issued by Joseph II, was promulgated.

Part Four of the thesis, Principles of Inheritance Law in Feudalism, contains an exposition of inheritance law in *Landrecht*, in municipal law and in the law of allegiance. Subchapters are structured as follows: first they outline the general principles in those medieval subsystems of law, then explain the legal rules governing hereditary succession *ab intestato* and then explain the legal rules governing testamentary hereditary succession. This Part also includes a chapter on important modifications of inheritance law following the Renewed Land Ordinance.

The objective of Part Five of the thesis, Codification of Modern Inheritance Law, is to outline the developments of inheritance law following its first codification, i.e. in particular the principles of inheritance law and its underlying principles. The first general regulation in what today is the Czech Republic, which laid down the rules of statutory hereditary succession in respect of free property the owner of which died intestate, was the Hereditary Succession Patent issued by Joseph II in 1786.

Part Six of the thesis, Conclusion, briefly summarises the preceding chapters.

Part Seven, References, contains a complete list of the references and resources used in the thesis.

**Keywords:**

Inheritance law, inheritance, principles of inheritance law, hereditary succession *ab intestato*, testamentary hereditary succession, last will, testament, devise, bequest, *Landrecht* [governing the nobility], municipal law, law of allegiance [to the lord], indivisible ownership, *bona vacantia*, land books.