The burden of proof in the disputes for unjust enrichment

Abstract

This diploma thesis deals with the institute of the burden of proof. Its aim is to analyse

the distribution of the burden of proof in disputes for unjust enrichment. The thesis consists

of an introduction, four main chapters, which are further internally divided and the conclusion.

The introduction is focused mainly on the reasons of author's choice of the topic.

The first chapter contains the general characteristics and interpretation of key concepts

as well as related institutes, whose basic knowledge will be a key to other parts of the text.

It explains the differences between the concepts of proof, counter-proof and objection.

It then analyses the standard of proof needed to prove certain facts. It also describes the state

of non liquet and analyses the individual procedural obligations and burdens of the parties.

The subject of the second chapter of the thesis is the term of the burden of proof, which

can be divided into the objective and subjective burden of proof. The subjective burden of proof

can be further subdivided into the abstract and concrete burden of proof. The chapter goes

on to analyse selected theories of distribution of the burden of proof, while not neglecting

the negative theory of proof. In the partial conclusion, thesis inclines to the Rosenberg's theory

of norms analysis. Based on this theory, thesis formulates a model of distribution of the burden of

proof in disputes for unjust enrichment.

The focus of the thesis is on the third, the most extensive chapter, which contains

of the application of above mentioned rules on model disputes for unjust enrichment.

After the general characteristic of the unjust enrichment institute, constituent elements

are discussed. Theory of norms analysis is applied to material legal regulation. In model disputes,

thesis demonstrates the distribution of the burden of proof between the parties of the dispute.

The last, fourth chapter deals with the intent of the new civil law order. In this chapter,

attention is focused on explicitly setting the duty of honesty as well as the division of the burden

of proof between the parties to the dispute into the forthcoming procedural legal regulation.

The conclusion of the thesis points to the different views of the enriched and deprived

and the issue of bearing the burden of proof in disputes for unjust enrichment. It also assesses

the usefulness of work in the future for the effectiveness of the new civil procedure.

Keywords: burden of proof, unjust enrichment, distribution of burden of proof

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