



MASARYK UNIVERSITY
FACULTY OF LAW

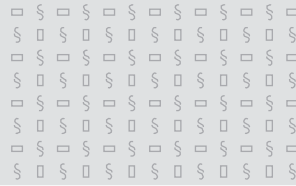
Ownership of real estate

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A plot of land

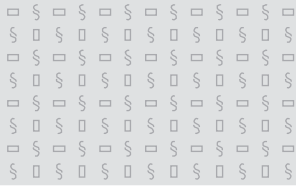
- Plot of land is considered to be an individualized part of the surface of the Earth regardless of what substance it is covered with (agricultural land, built-up area, watercourses)
- Lot (parcela) is often used, especially in common usage.
- Lot is a plot of land which is determined by its position and geometry, depicted in a cadastral map.
- <http://nahlizenidokn.cuzk.cz/>



Construction I.

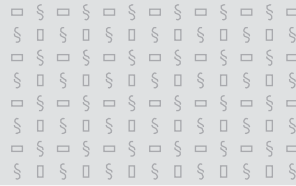
■ Civil law

- civil law regulations do not contain any specific delimitation of the notion of a ‘construction’ either, although they do operate with this term on several occasions.
- Any construction object needs to be considered as a construction if it is at such a building stage when the layout of at least the first ground floor is apparent in a clear and unmistakable manner.



Construction II.

- Building law - regulation governs the construction and the steps involved in the process of construction.
- **The conceptions of a ‘construction’ are not identical in civil law and in building law.**



Component

- a component (integral) part of a thing is anything that pertains to a thing by its nature and cannot be separated from it without reducing the value of the thing
- Under the current Czech law (as opposed to some legal regulations in the past), a construction is not a part of the plot of land (i.e. the principle of *'superficies solo non credit'* is applied).
- A construction is always an independent thing, but only from the moment when it becomes a thing in the legal sense.



Accessories to a thing

- Accessories constitute independent things that are not component parts of a thing.
- Accessories are characterised as things that belong to the owner of the principal thing and are designated by the owner to be used permanently together with the principal thing.



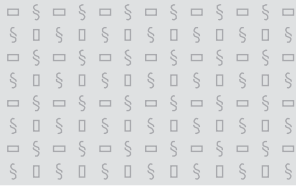
Ownership triad:

1. the right to use a thing and enjoy its fruits and proceeds;
2. the right to dispose of a thing;
3. the right to hold a thing.



Restrictions of ownership

- Restrictions of ownership that are applicable under certain conditions to all owners and arise directly from legal regulations constitute certain internal limitations and tend to be identified as ‘conceptual restrictions’.
- There is the rule, above all, that every owner of any movable or immovable thing must abstain from anything that might cause annoyance to an unreasonable extent to another person or seriously jeopardise the latter’s exercise of his rights. (Section 127 of the CCC).



Acquisition of ownership

- Ownership title may be acquired in various ways (called legal reasons) that are subject to various classifications.
- The original acquisition needs to be distinguished from derivative acquisition.



Acquisition on the basis of contract I.

- As regards the acquisition of ownership on the basis of contract, it is important to distinguish whether the legal system accords the effect of translation or the effect of obligation to the contract.
- In the former case, the transfer of ownership is realised by the contract itself (its effect). In the latter case, the contract is merely a legal title giving rise to the obligation to transfer the ownership title, while the actual transfer occurs only on the basis of some other legal fact



Acquisition on the basis of contract II.

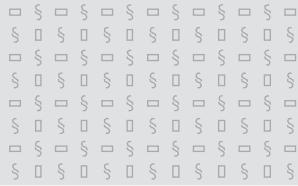
- This is, above all, the hand-over and the take-over of a thing, and ‘intabulation’ (i.e. entry into public records) in the case of immovable things. Under the Czech legal system, contracts typically have only the effect of obligation.
- Where an immovable thing (real estate) is transferred, ownership title is acquired upon the entry into the real estate registry, unless provided otherwise by a separate act.



Acquisition on the basis of contract III.

■ Purchase contract

- A purchase contract for real estate must be in writing and the declarations of the wills of the contracting parties must be on the same document. Any deficiencies in the legal form of a purchase contract result in the nullity of such a contract.
- The contract must identify the parties by means of designations required by cadastral regulations, specify the subject matter of the purchase and agree on the purchase price.



Acquisition on the basis of contract IV.

■ Contract of exchange

- may be concluded concerning a mutual exchange of real estate. Such a contract is reasonably regulated by similar legal regulations as the purchase contract.



Acquisition on the basis of contract V.

■ Pre-emptive right of purchase

- The pre-emptive right of purchase may be characterised as a legal relation of obligation, whose subjects are constituted by the obligor and the obligee. The content of this relation is mostly the right of the obligee to be offered by the obligor a certain object for purchase should he wish to alienate it, and the obligor's obligation corresponding to this right.
- The pre-emptive right of purchase may arise mainly on account of the following legal reasons:
 - a) on the basis of a contract,
 - b) by operation of law.



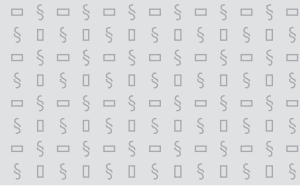
Acquisition by inheritance

- the acquisition of ownership title, is that the passage of ownership to heirs occurs upon the death of the deceased. This is the so-called ‘principle of descent’ (as opposed to the decedent’s estate *hereditas iacens* where inheritance is acquired by its transmission).



Acquisition by means of a decision of a state authority

- The CCC regulates some special cases of acquisition of ownership title by a state authority's decision, e.g. as regards **the judicial decision to cancel and settle common property** (Section 142), **the order to transfer ownership title to an unauthorised construction** (Section 135c(2) - only if the ownership of construction transferred to the owner of the plot of land), and **the sale of real estate and movables ordered by a court in the execution of judgment**, etc.



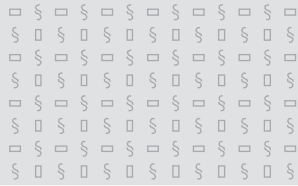
Acquisition on the basis of other facts specified by law

- accretions of a thing (“přírůstky věci”; Section 135a)
- prescription (usucapio, acquisitive prescription, “vydržení”)
- processing (“zpracování”; Section 135b of CCC)



Prescription

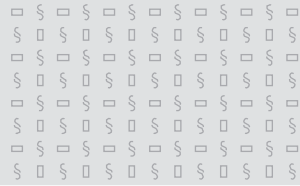
- a competent subject (prescription can result in the acquisition of ownership title in the case of both natural and legal persons),
- a competent subject matter (any object may be acquired by prescription that is subject to the right of ownership except for things that may be only in the ownership of the state or legal persons specified by law),
- lawful possession (disposition of a thing in the same way as of one's own, with view to all the circumstances that the thing belongs to its holder),
- the passage of the period of prescription period, which is:
 - 3 years in the case of possession of movable things; 10 years in the case of possession of immovable things,
- the possession must be uninterrupted for the entire length of the prescription period; any relevant loss of possession means the termination of the prescription period; the prescription period may include the time for which the legal predecessor had the thing in his or her lawful possession.



Termination of ownership title I.

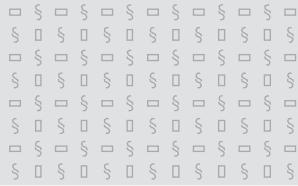
- absolute termination
 - Absolute termination occurs when ownership title to a thing terminates without anybody else acquiring it.

- relative termination
 - Relative termination includes situations when ownership title terminates for the former owner with someone else acquiring the right at the same time.



Termination of ownership title II.

- **Termination on the basis of a manifestation of the will of the existing owner**
 - By contract
 - By dereliction of a thing
 - By destruction of a thing
 - By consumption



Termination of ownership title III.

- Termination independent of the will of the existing owner
 - By cessation of existence of a thing
 - By loss of a thing
 - By death of the owner
 - By prescription
 - By decision of a state body



Protection of ownership title

- The fundamental legal protection always consists of the legal instrument of the highest legal power - the Charter of Fundamental Rights and Freedoms.
- **Action for the recovery of a thing (real action)**
(“Žaloba na vydání věci (žaloba reivindikační)”)
- **Action to repel a claim (actio negatoria)** (“Žaloba zápůrčí (negatorní)”)



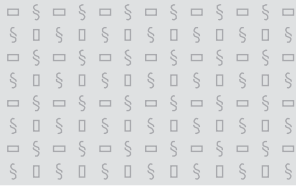
Common property I.

- **‘apportioned’ common property** is a share (an ownership interest) representing the degree to which co-owners participate in the rights and obligations ensuing from their co-ownership of a common thing (Section 137(1) of CCC).
- The share does not delimit a certain part of a thing with respect of which a co-owner is authorised to exercise his ownership title; it expresses the legal position of a co-owner towards the other co-owners, determining how the individual co-owners participate in the proceeds of a thing, what expenses they bear,
- **‘Apportioned’ common property** comes into existence in the same manner as ownership title



Common property II.

- These specific rights and duties have been traditionally classified into three groups according to what subjects they pertain to:
 1. the mutual relationship between co-owners,
 2. the relationship of all co-owners towards third persons concerning the common thing,
 3. the relationship between one co-owner towards other co-owners concerning his co-ownership share.



Questions

1. How is the concept of "construction" defined in Czech Civil Law?
2. What is "an integral part of a thing"?
3. What does "an accessories of a thing" mean?
4. What does "ownership triad" mean?
5. What is necessary for conveying a real estate?
6. What does a "purchase contract" mean?
7. How to originate a pre-emptive right of purchase?
8. What does an "accretions of a thing" mean?
9. What are the requirements for prescription?
10. How can an ownership be terminated?



Literature for study:

- SELUCKÁ, Markéta - FIALA, Josef - HURDÍK, Jan - RONOVSÁ, Kateřina - KOUKAL, Pavel - HANDLAR, Jiří. *INTRODUCTION TO THE CZECH CIVIL LAW I. , PARTIES, OWNERSHIP, SALE, LEASE, LIABILITY FOR DAMAGES*. Brno : Masarykova univerzita, 2009. 96 s. Edice učebnic PrF MU č. 428. ISBN 978 -80 -210 -4925 -3.