



MASARYKOVA UNIVERZITA  
PRÁVNICKÁ FAKULTA

# Introduction to the Czech civil Law

## Main pillars and opened questions

Zápatí prezentace



# Introduction to the course II

## Basic sources and literature:

- Textbook „Introduction..“ - to buy in the bookshop or to borrow from the library or to copy in the library (+ on IS)
- Czech Civil Code (eng. translation of Ministry of Justice) - on IS
- Private Law Reform. Lavický, Hurdík et al., Brno: MU, 2014 (on IS yet!!)
- Hurdík-Fiala: Contracts. Czech Republic. IEL. Kluwer Int. 2nd edition 2020, ISBN 978-9403520933
- Hurdík-Dobešová: Torts. Czech Republic. IEL. Kluwer Int. 2017 (prepared upgrade 2019 - in production)
- ..
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# Summary - essential pillars of Civil Law

- Conceptual and Systemic Solution (Private Law - Public Law - general - special Private Law; parts of Civil Code; signification of General Part..)
- Basic values, on which is built the Civil Law - Principles of Civil Law
- Legislative technical building of Civil Law („*toolbox*“ of Civil Law):
  - juridical/legal Relation (gives to the civil life both the complexity and structure - it can cover whole Civil Law)
  - juridical fact (put the juridical relations in motion, cause the change of juridical relations) - e.g.: contracts
  - illegal fact - e.g.: torts



# Conceptual and Systemic Solution I

- (Private Law - Public Law - (a) „inside“ look at the history of structure and system of private/civil law. In the proces of solution from the renewal of faculty of law (1969) till today: impact of the influencing of structure of department for civil law on teaching procedure at the department, including the prospect to the future. (b) position of teaching of Civil Procedure Law (arising of the Chair for Civil procedure Law)





# Sources of Czech private Law

- Continental, written, codified law
- Main sources: Civil Code + complementary legal acts
- Plurality of sources:
  - the Charter of fundamental rights and liberties as the part of Czech constitutional order
  - Principles being the ground of C.c.
  - Opinion of legal science
  - Judicatory practice: the judge have to follow the precedent decision in another similar case (§ 13 C.c.)

The way to the precedent law??



# Conceptual and Systemic Solution II

- general - special Private Law (borders between them?) (a) Is consumer law, family law etc. the „special“ Private Laws or the parts of Code Civil? (b) position of consumer legislation (integral Part of the Code or separate legislation?)
- parts of Civil Code - (a) general civil relations and consumer law as special part? (b) signification of statutory determination of consumer law (consumer as special kind of person or „*ad hoc*“ protection of weaker party (incl. small and middle business)? (c) new question, which has appeared in the contemporary scholars writing: co called *asymmetric contracts*. The tendencies to give to the asymmetric contracts the position of „new paradigm of contracts law“.
- signification of general Part: important funkcional differences:
  - between both gen. and some of the Specific Parties - principle of specification (*lex specialis derogat legi generali*)
  - between two parties of C.c. in case the gen. party is missing,  
- principle/rule of analogy/similarity



# Structural elements of juridical relation

- Subject/Party: Person
- Object: Thing (in the juridical sense)
- Content: Rights and Duties



# Person I

- Living human being
- Legal person
  - *Tertium non datur* !
- Human - opened questions:
  - Animals (the live animal is not thing: § 494 C.c.): What is it then?
    - The regulation of things is to be applied on the animals similarly (specific protection)
  - Artificial intelligence - „AI“ (currently, we miss in the Czech private law explicit rules)
  - Mentally handicapped human (being) - full personality; full protection; minimum of restrictions of act (minimal limitation of legal capacity/ability to manage one's own affairs)
  - Change of sex: only through the medical way - see § 29 C.c. (not only on the base of feeling of human herself/herselve to be the man or woman or third etc. sex).





## Person II

- **Legal person - opened questions**
  - **Theoretic Base** (theory of fiction; theory of reality: § 20 C.c.)
  - How the legal persons **act?** (C.c.: organic theory - Gierke; principle of representation - legal person acts by proxy/ either on behalf of person entitled by the statut of l.p., or on behalf of person having full power of attorney)
  - Legal persons of **public utility** (Proposal of legal Act concerning Status of public utility refused by Senat 2013; subsequently: the term Status of public utility was canceled and „forgotten“; now the status of public utility is missing)



# Thing (in juridical sense)

## ■ Legal definition:

- All, what is different of person and
- if it serves for some human need (§ 489 C.c.)

## ■ Questions:

- Is there also (industrial, household etc.) **waste** (trash) the thing in juridical sense? (Object of no value, it cannot be appraised = out of definition..)
  - Way to the solution: we need to work upon the waste to keep the Earth able to live = there is value/prix of waste, even thought minus (-) (costs of waste processing)
- Broad conception of thing - what about immaterial/intangible goods? Object of ownership (are they able to be kept or only to be under control?) - intellectual property? (It is step by step less able be under control- *death of the author - omnipresence of information*)