

Thesis synopsis

My doctoral dissertation is entitled “*Joint Ownership – A Pattern of the Property Right*” and is quite simply framed in two parts, structured in chapters and subchapters.

Part I – “*Coordinates of the Property Right*” - is a complex study of the elements which determine the absolutely particular juridical system of one of the strongest real rights, the ownership right. Since my doctorate thesis focuses on the study of joint ownership as a pattern of the property rights, I consider highly pertinent that, preliminary to assigning specific characteristics of co-ownership, it is appropriate to offer an overview approach of the most important elements underlying the juridical system specific to the property right.

Chapter I, entitled “*Joint Ownership as a Subjective Civil Right*”, represents an introductory part of the research on the ownership right, in a trial of enframing the theme within the ample problematic issues concerning the property rights.

Chapter II, “*Dimension of Property Right from the Perspective of Fundamental Law*”, is an exposure of the property right from the perspective of fundamental law. Provisions of art.44, item 1 from the Constitution stipulates that “the ownership right, as well as state rights are guaranteed”, granting a generic warranty to property, which is fluid at first sight but, in fact, aligns the three essential attributes that give the juridical aspect of this right - *jus utendi*, *jus fruendi* and *jus abutendi*. In certain exceptional situations, expressly provided in the law, the state will limit these three attributes of the property right, but these limitations shall respect the provisions of art.53 of the Romanian Constitution. The way in which constitutional regulations are interpreted and enforced as well as the limitations to the property right are analyzed and presented in Chapter II.

Chapter III is entitled “*Protection of the Ownership Right by Means Characteristic to the Civil Right*” and is based on the idea that the indispensable element for the intrinsic finality of subjective civil rights represents the protection given by juridical order. Any right threatened by hazard, uncertainty or arbitrary will be misapplied at any moment. The challenge of protecting and guarantee subjective civil rights represents one of the fundamental principles of the Romanian Civil Law and is provided both in national normative acts and in international documents in which Romania is a party as well. Similar to any other subjective right, the property right stringently needs juridical order protection to be fully enforced. As far as the Private Law is concerned, the problem of the property right protection is mainly materialized at the level of legal relationships between the owner and the other persons who are obliged to restrain themselves from any intrusion to compromise the normal enforcement of the property right. All the aspects regarding the necessary judicial means ensuring juridical protection of the property right and their enforcement represent the analysis objective of this chapter.

Part II is entitled “*Joint Ownership - A Pattern of the Property Right*” and consists of seven chapters.

Chapter I, “*General Overview on the Patterns of the Property Right*”, illustrates an analysis starting from the idea that the property right is *prejudiced by proceedings* either when a person’s property is uncertain and someone else has the title to exert prerogatives (voidable property and defeasible property) or when more persons have ownership right on a property or more properties and are legitimated to exert prerogatives concomitantly.

Regarded as exceptional status, the patterns of the ownership right do not have a clear, detailed regulation in the Romanian legislation, each characteristics of the patterns accepted by doctrine and jurisprudence being exposed in this

chapter. A complete analysis of joint ownership cannot be accurate without a clear display of the general picture of juridical institutions to which it belongs.

Chapter II is named “*General Theory on Joint Ownership*” and presents a general overview on joint ownership forms as well as a clear conceptual delimitation of notions such as “tenancy-in-common”, “ownership in condominium” and “co-ownership”.

A distinctive section in this chapter discusses statutory evolution of the analysed juridical institution. Legal regulations of co-ownership in other law systems as well as judicial nature of co-ownership represent the objective of another distinct part of this chapter.

Chapter III presents a detailed analysis of joint ownership in condominium, focusing on judicial nature and juridical system. This chapter also provides a comparative analysis of joint ownership in condominium and tenancy-in-common.

Chapter IV, entitled “*Tenancy-in-Common*”, presents a complex study of one of the patterns of joint property, respectively general and provisional. This chapter is divided into distinct sections and each of them offers an accurate study of all the aspects outlining juridical system of joint ownership, starting from the very beginning of co-ownership status to the rights awarded to the co-owner both on joint tenancy and on ideal tenancy-in-common, and finally on the ways of joint ownership cessation.

Chapter V treats the juridical institution of forced and perpetual joint ownership. Forced or perpetual ownership means the ownership of certain goods which does not belong exclusively to one person but represents the object of a co-ownership which cannot cease through apportionment.

On the one hand, tenancy-in-common means that each co-owner has the legal right of exclusive ownership on a property or certain goods and, on the other hand, has the legal right of a quote-share of the goods which can be used

only in joint tenancy as they are necessary accessories to exercise the right upon a property or other goods. This pattern of joint ownership is forced, permanent and at the same time has an accessory character in regard to the right of exclusive ownership. Referring to this accessory character, we can notice that the goods cannot be sold, donated, apportioned, mortgaged or controlled independently of one another. Thus, this chapter analyses all the peculiarities of juridical aspect of this institution as well as the patterns of forced co-ownership in the way they are regulated in provisions of the Civil Law Code.

Chapter VI consists of a comparative study of the patterns of joint ownership and their correlations with similar juridical institutions.

Chapter VII analyses the juridical system of co-ownership conform to provisions of the New Civil Law Code. The previous study emphasized the complexity of co-ownership issues and the fact that, despite its importance, for the time being this institution does not benefit from an express legal regulation. Moreover, in this study we made a series of proposals for *lex ferenda*, which will clearly disentangle the co-ownership juridical system. That is why the review of provisions in the New Civil Law Code was presented in the last part of the study, as we intended to make a comparative analysis of evident jurisprudence aspects exploited in the New Civil Law Code and the novelties in the further regulations. Last but not least, we focused on the way in which the legislative solution proposed corresponds with judicial practice requirements as they were pointed out in this paper.

This study shows our trials and success in highlighting both the advantages of this institution and the inconveniences of actual regulations, underlining the necessity of new regulations to ensure flexibility and real practical applicability to this institution.

The last part of the paper synthesizes the author's conclusions, emphasizing some of his proposals for *lex ferenda*.