

**Bartłomiej Wiktor Woźniak**

## **Trust Estate Protection Aspect of Real Subrogation in the European Legal Tradition**

The doctoral thesis concerns the issue of trust estate protection aspect of real subrogation in the European legal tradition. Pursuant to the principle of the real subrogation, the assets which have been acquired in exchange for or with a use of the assets deriving from a given estate shall become a part of such estate. As a result, the beneficiary of the estate shall have the same right to the newly acquired assets as he or she had to the original ones. The mechanism of the real subrogation principle was quite precisely described in two medieval proverbs: „*in iudicii universalibus pretium succedit loco rei et res loco pretii*” (within an overall estate price comes into place of a thing and thing comes into place of a price) and „*subrogatum sapit naturam subrogati*” (a substitute acquires nature of the original thing).

The main objective of the dissertation is, however, not to describe all areas where the real subrogation is used but to analyze its connection with remedies concerning protection of trust estate in different legal systems. Legal character of the real subrogation allows for treating this legal institution as a method of securing estates by protection of their value despite alternation in their composition. Therefore, the thesis does not constitute a sole analysis of trusts and other fiduciary relationships in chosen legal systems, nor does it constitute a study on the implementation of the real subrogation principle in such systems. The main subject of my research is to answer the following questions:

- 1) what kind of remedies concerning protection of trust estate existed in Roman law and what remedies are applied for protection of trust estate in English law, Polish law, international regulations and European law harmonization drafts?
- 2) what is the role of the real subrogation principle in protection of trust estate and securing rights and interests of a settlor of a trust and its beneficiary?
- 3) is the real subrogation principle *condition sine qua non* for existing of a fiduciary relationship?

The answers to the above questions should lead to further remarks in regard to essential features of the fiduciary legal relationships. As a result, this thesis shall constitute an input to the discussion about the legal nature of the fiduciary relationships and criteria that should be fulfilled in order to deem a given legal relationship fiduciary in nature.

The real subrogation works as one of protection methods in trust estate, enhancing effectiveness of other legal instruments. Presentation of the scope of applicability of the real subrogation principle requires analyses of other protection methods in trust estate within given legal systems. Such methods differ depending on the legal character of a given fiduciary relationship and scope of their applicability. Within the dissertation the protection of the trust estate will be presented from the following points of view: (1) protection of the beneficiary's position, (2) protection against actions of a trustee undertaken in breach of their fiduciary duties and (3) securing of the integrity and value of the trust estate.

The thesis starts with an overall analysis, including terminological and methodological remarks. Despite inevitable difficulties, it is important to explain the meaning of legal institutions of a fiduciary relationship, fiduciary estate and real subrogation. With a view to present the role of the real subrogation principle in protection of the trust estate, I will use comparative and historical methods of studies.

After the initial remarks, in the subsequent chapters I will present Roman law as a basis of the so-called continental legal family, English law, being the source of the common law system and Polish law as an example of the modern continental legal system being a mixture of different legal traditions.

The analysis will be summed up by description of the international trust regulations and drafts of legal acts (so-called model legislation) which were supposed to be a basis for harmonization of the trust law in Europe. The very last two chapters includes general summary and conclusions.

In the dissertation I will try to assess the role of the real subrogation within the context of other protection methods in trust estate. I will also try to answer the question of what elements of the fiduciary legal relationships are essential, in particular, whether the fact that the parties in a legal relationship trust each other is sufficient to call this legal relationship a fiduciary one or if there must exist a combination of legal remedies securing a beneficiary and a trust estate, being characteristic only to this kind of legal instruments.