Faculty of Law and Administration
University of Warsaw

Bulletin no. 1 · Publications

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Centre for Promotion of Polish Legal Research
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About the Faculty

The Faculty of Law and Administration at the University of Warsaw was founded in 1808 as the School of Law of the Duchy of Warsaw, primarily for the purpose educating members of the judiciary and civil service. In 1816 the School was incorporated into the newly established University of Warsaw. Following the restoration of independence by Poland in 1918, the University, together with the Faculty of Law, was promoted to the status of state university. Both during the interwar period and after World War II professors associated with the Faculty made a considerable contribution to the process of unification and codification of Polish law. Among the most notable alumni of the Faculty are Menachem Begin and Leonid Hurwicz.

Contemporarily, the Faculty of Law and Administration is the largest academic institution in Poland offering legal studies at graduate level that conducts research into a wide variety of legal topics. It employs in excess of 200 faculty members, boasts a resourceful library and operates in four building located on the main university campus. Many faculty members perform important public functions and practice law, thereby exerting sizable influence upon the processes of creating and enforcing law in Poland and the European Union alike. Research activities undertaken at the Faculty are centred around the study of Polish and European law, however they frequently involve broad comparative exercises. The Faculty maintains extensive international cooperation with academic centres around Europe as well as in the United States, China and South America. Recent years have shown a surge in interest in the legal systems of countries in Eastern Europe and Asia and their legal and economic relations with Poland and the EU. A variety of publications in reputable in international journals, a selection of which is featured in this bulletin, bears testimony to the quality of the Faculty's scholarly output.

Organizational units of the Faculty of Law and Administration

The basic organizational units of the Faculty of Law and Administration consist of traditional departments and chair groups whose interests revolve around traditionally distinguished branches of law. In addition, faculty members conduct research dedicated to narrow fields within chairs. The Faculty also hosts several centres which concentrate on interdisciplinary legal research and derivative fields.

Institute of Legal History

- Department of Roman and Ancient Law
- Department of History of the Polish Law and Constitution
- Department of World History of the State and Law
- Chair Group of Religious Law
- Chair Group of European Legal Tradition
- Chair of History of Legal Culture
- Chair of Legal and Historical Bibliography
- Chair of 20th Century Polish Law

Institute of Legal-Administrative Sciences

- Department of Insurance Law
- Department of Financial Law
- Department of Labour Law and Social Policy
- Department of Agricultural Law and the System of Protection of Food
- Department of Administrative Law and Procedure
- Chair Group of Human Rights

- Chair Group of Administrative Theory
- Chair Group of Administrative Economic and Banking Law
- Chair of Food Law
- Chair of Non-Employee Labour Relations
- Chair of the Centre of New Technologies

Institute for the Study of the State and Law

- Department of Legal Sociology
- Department of Legal Philosophy and the Study of the State
- Department of History of Political and Legal Doctrines
- Department of Constitutional Law
- Department of Logic and Legal Informatics

Institute of Civil Law

- Department of Commercial Law
- Department of Civil Procedure
- Department of the Law of Intellectual Property and Intangible Goods
- Department of Comparative Civil Law
- Department of Civil Law
- Chair of Medical Law and Biotechnology
- Chair of Capital Market Law

Institute of International Law

- Department of International Private and Commercial Law
- Department of European Law
- Chair Group of International Aviation and Space Law
- Chair Group of International Public Law

Institute of Criminal Law

- Department of Forensics
- Department of Comparative Criminal law
- Department of Criminal Law
- Chair Group of Criminal Procedure
- Chair Group of International Criminal Procedure
- Chair Group of Criminology
- Chair of Criminological Technique

Law Clinic

Chair of History of the Faculty of Law and Administration

Centre for Extra-Judicial Dispute Resolution

Polish Research Centre for Law and Economy of China

Centre for American Law

Centre for the Study of the Law of Eastern Europe and Central Asia

Centre for Promotion of Polish Legal Research

About the Polish Centre for Promotion of Polish Legal Research

The Centre for Promotion of Polish Legal Research was founded in early 2017. Its functioning is funded by the Ministry of Science and Higher Education under the DIALOG scheme. The Centre is tasked with popularizing the achievements and enhancing the reputation of Polish legal research at an international level. To those ends, the Faculty of Law and Administration makes an effort to support its faculty members and PhD candidates in internationalizing the results of their research, in particular by publishing in prestigious journals and partaking in international conferences. The Centre also acts as an intermediary in the process of developing international ties of the Faculty as well as organizing mutual academic events and initiating research projects. Above and beyond, it is a special task and ambition of the Centre to promote Polish legal research and energize scholarly exchange on the Eastern front. To further this ambition, a permanent office of the Centre, whose functioning is based upon the international gateway model, was opened in Kiev in April 2017. Its responsibilities include advancing and coordinating cooperation with premier Ukrainian scholarly centres, non-governmental organizations and business leaders.

Bulletin

Dobrochna Bach-Golecka

"Why is Man the Primary and Functional Way for the Church? The Involvement of Christian Teaching in Contemporary Human Rights Discourse"

in Angus J.L. Menuge (ed.), *Legitimizing Human Rights: Secular and Religious Perspectives* (London: Ashgate, 2013), pp. 199–212
ISBN 978-1-4094-5002-3

Keywords: human rights | Catholic social teaching | philosophy

The aim of the paper is to analyze the impact of Christian teaching, and more specifically the Catholic doctrine, upon the contemporary human rights discourse. Thus, there are certain assumptions and limits inherent in the scope of the undertaking. Historically, it was the Christian doctrine, irrespectively of denomination, that had the greatest influence in the process of emergence and evolution of human rights. Jewish, Greek, and Roman heritage of Christianity helped to cultivate the cardinal ideas of dignity, equality, liberty and democracy that ground the modern human rights paradigm.

Dobrochna Bach-Golecka

"Reflections upon the Right to Life in the Prenatal Phase"

(2013) 45 Universitas Gedanensis, pp. 61–72

Keywords: abortion | pro-family policy | right to life | solidarity

The focus on the contemporary understanding of the right to life in the prenatal phase may concern several perspectives: legal, sociological and philosophical. Within the legal perspective, relevant human rights provisions are to be analyzed. Within the sociological perspective, the notion of solidarity should be examined in order to explain the involvement of

a community and development of pro-family policies. Within the philosophical perspective, the notion of caring (love) would be used to illustrate the relationship between an unborn child and other people.

Dobrochna Bach-Golecka

"To Be or Not to Be… A Parent? Abortion and the Right to Life within a European Legal Context"

in Aleksander Stępkowski (ed.), *Protection of Human Life in its Early Stage. Intellectual Foundations and Legal Means* (Frankfurt am Main: Peter Lang, 2014), pp. 191–207
ISBN 978-3-631-64227-6

Keywords: human rights | abortion | right to life

The aim of the article is to analyze legal provisions on abortion developed in Europe in order to evaluate the correctness of the preliminary hypothesis concerning the recognition of the right to life in the pre-natal phase. Relevant norms of the European law and the case law of the Court of Justice of the EU are analyzed. The analysis is supplemented with an examination of domestic regulations on abortion in EU Member States as well as relevant provisions on abortion developed within the *mileu* of the Council of Europe and in the judgments of the European Court of Human Rights.

Witold Borysiak

"Roman principle Nemo pro parte testatus pro parte intestatus decedere potest and the reasons of its modern rejection"

in Zuzanna Benincasa, Jakub Urbanik (eds.), *Mater familias. Scritti romanistici per Maria Zabłocka* (Warszawa: The Raphael Taubenschlag Foundation – The Journal of Juristic Papyrology, 2016), pp. 63–83
ISBN 978-83-938425-9-9

Keywords: Roman law | civil law | law of succession | testamentary succession | intestate succession | universal succession | freedom of testation | roman law principles

The article describes the origin, the construction of and the exceptions from one of the most important rules of the Roman law of succession – the principle of *nemo pro parte testatus pro parte intestatus decedere potest*. The historical development of this principle and the solutions adopted by

contemporary law are described. It focused on the grounds for the rejection of this principle in almost all contemporary legal systems (e.g. freedom of testation and different understandings of the causa of the universal succession).

Witold Borysiak

"Transfer of Property in Polish Law: Causality and Abstraction"

(2013) 56 Studia Iuridica, pp. 63–72

Keywords: transfer of property | obligatory agreement | dispositive agreement | double-effect agreement | consensual system | principle of causality | principle of abstraction | bona fides acquisition

The article characterizes transfer of property as an institution of Polish civil law. Firstly, it describes what kind of agreement effects the transfer (i.e. when an obligatory agreement with so-called double effect suffices or when a separate dispositive agreement, which transfers the property in performance of an earlier obligation, is required). Secondly, the author provides an analysis of when the transfer of ownership is perfect in virtue of the contract alone and when it requires a transfer of possession. Thirdly, the paper spells out in which situations the agreement is causal or abstract in nature.

Wojciech Brzozowski

"When Anointing Becomes Annoying: Remarks on the Polish Supreme Court's Judgment of 20 September 2013 (II CSK 1/13)"

(2015) 5(2) Wroclaw Review of Law, Administration & Economics, pp. 70–80

Keywords: religious freedom | coercion in religious matters | patients' rights

In the judgment of 20 September 2013 (II CSK 1/13), the Polish Supreme Court delivered its judgment in a case that involved a Catholic priest administering the sacrament of anointing of the sick to a non-believer previously put into a drug-induced coma. This case raised much interest among Polish legal scholars but is not widely known abroad, despite the fact that it touches upon some key aspects concerning protection of religious freedom. The aim of the paper is to examine whether the case could be resolved by way of compromise.

Katarzyna Julia Furman

"Обзор отдельных принятых и планируемых изменений в Польском уголовном кодексе и уголовно-исполнительном кодексе" (Review of selected adopted and planned changes in the Polish Criminal Code and the Criminal Executive Code)

in Уголовное право: стратегия развития в XXI веке: материалы XIV Международной научно-практической конференции 26–27 января 2017 г. (Criminal law: development strategy in the 21st century: materials of the XIV International Scientific and Practical Conference January 26–27, 2017) (Moscow: Original Market, 2017), p. 688
Original language: Russian

Keywords: Polish criminal code | social issues | social aspects of legal changes

This short text is a brief abstract of a presentation planned to be given during the International Conference of Criminal Law: development strategy in the XXI century, which took place at the Kutafin Moscow State Law University (MSAL). The abstract lists selected changes to the Polish Criminal Code and Executive Criminal Code. All reforms are to be discussed together with accompanying social aspects. The review covers the period of the most recent term of the Polish Parliament (since October 2015).

Anita Garnuszek

"How a state may evade enforcement of arbitral awards? – The notion of enforcement immunity"

in Anita Garnuszek, Laura Mazur, Aleksandra Orzeł (eds.), *Quo Vadis, Arbitrażu? Quo Vadis, Arbitration?* (Warszawa: Wydział Prawa i Administracji Uniwersytetu Warszawskiego, 2013), pp. 131–160
ISBN 978-83-63397-22-7

Keywords: international commercial arbitration | enforcement immunity | state entities in arbitration

This article deals with the issue of enforcement immunity. Usually, a favourable arbitral award is only the first step towards a complete victory. This article covers two peculiar legal configurations, namely where assets are being used for commercial purposes and where a state waives its immunity. In the first part, the author discusses whether bank accounts belonging to states and embassies should be subject to immunity. Next,

the notion of waiver is expounded upon. The question posed is whether a waiver of immunity from jurisdiction encompasses a waiver of immunity from enforcement.

Anita Garnuszek

"May a State justify infringement of investors' rights by financial necessity?"

(2014) 16(3) Internetowy Przegląd Prawniczy TBSP UJ, pp. 59–76

Keywords: international investment arbitration | circumstances precluding wrongfulness | notion of necessity under international law

Whether a state can invoke the necessity defence to dispute wrongfulness of its actions that infringed investors' rights is of paramount importance for entrepreneurs and, more broadly, for economic security. In order to answer this question, it is necessary to specify the nature and scope of interactions between customary and treaty law. In cases against Argentina, arbitral tribunals could not come to a common conclusion which norm of law should be applied first. If we assume that, apart from a binding treaty norm, customary rules should be taken into account at least as a supplementary source of law, then it is necessary to analyse particular premises included therein.

Anita Garnuszek, Aleksandra Orzeł

"Enforceability of Multi-tiered Dispute Resolution Clauses under Polish Law"

(2016) 24 Arbitration Bulletin – Young Arbitration, pp. 166–180

Keywords: international commercial arbitration | multi-tiered dispute resolution clauses

Multi-tiered dispute resolution clauses usually provide for separate escalating steps for the resolution of disputes between the parties. Typically, these clauses stipulate that before pursuing arbitration the parties will try to settle their dispute in negotiations and/or mediation. Despite gaining increased support among businesses, they also raise certain concerns regarding their legal effects. The main question posed by the authors of the paper is whether such clauses are enforceable, and if so, what their effect

on arbitration proceedings is. Thus, the analysis concentrates on the possibility of raising a defence of non-fulfilment of pre-arbitration requirements before an arbitral tribunal from the perspective of Polish law.

Anita Garnuszek

"Immunity Defences in Enforcement Proceedings Concerning Awards Rendered in International Commercial Arbitration Involving States and State Entities"

in Klára Drličková, Tereza Kyselovská (eds.), *Cofola International 2016. Resolution of International Disputes. Public Law in the Context of Immigration Crisis. Conference Proceedings* (Brno: Masaryk University 2016), pp. 38–54
ISBN 978-80-210-8356-1

Keywords: international commercial arbitration | state entities in arbitration | enforcement proceedings

The issue of state immunity against the enforcement of arbitral awards in investment arbitration has always raised many concerns, especially among investors who could not be certain whether they would receive what had been awarded to them by an arbitral tribunal. However, the purpose of this paper is to answer the question whether an immunity defence may be similarly invoked in enforcement proceedings concerning awards rendered in international commercial arbitration involving states and state entities. Thus, the author will examine whether both the state itself and/or a state entity may rely on their immunity against execution if they participated in an international commercial arbitration. The general conclusion of the author is that in some instances such a possibility is ensured.

Anita Garnuszek

"The Law Applicable to the Contractual Assignment of an Arbitration Agreement"

(2016) 82(4) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, pp. 348–355

Keywords: arbitration agreement | assignment of an arbitration agreement | applicable law

This paper addresses the question of what law applies to the assignment of an arbitration agreement. In other words, on what legal basis a court or arbitral tribunal should determine the assignability of an arbitration agreement and the conditions and consequences thereof. The main hypothesis of the paper is that no uniformly accepted substantive rule or conflict of laws rule currently exists, and thus the issue of assignment of the arbitration agreement requires a determination of the applicable law. Such determinations may be made depending on whether the case is considered by a court or by an arbitral tribunal, on the basis of a statutory conflict of laws rule or on the basis of the conflict of laws rule which the arbitrators deem the most appropriate. A choice of the conflict of laws rule depends primarily on the characterisation or qualification of the issue by state courts or arbitrators.

Anita Garnuszek, Aleksandra Orzeł

"EU proposals to reform the investor-to-State dispute settlement system – a critical analysis of selected issues addressed in the concept paper "Investment in TTIP and beyond – the path for reform""

(2015) 5(2) Wroclaw Review of Law, Administration & Economics, pp. 52–69

Keywords: international investment arbitration | ISDS reform | TTIP

The article deals with recent proposals regarding the reform of the investor-to-state dispute settlement system (ISDS). At present, the European Union and the United States are involved in negotiations regarding the Transatlantic Trade and Investment Partnership (TTIP). In this respect, the EU has prepared a Concept Paper where it presented its ideas pertaining to the envisioned reform of investment arbitration and prospective provisions of TTIP on the matter. The authors' aim is to analyse the most important proposals included in the Concept Paper and make an assessment whether they should be regarded as beneficial for the system or potentially detrimental.

Tomasz Giaro

"Papinian und die reductio ad absurdum" (Papinian and the reductio ad absurdum)

in Jan Dirk Harke (ed.), *Argumenta Papiniani. Studien zur Geschichte und Dogmatik des Pri-vatrechts* (Berlin–Heidelberg: Springer, 2013), pp. 41–57
Original language: German

Keywords: Papinian | absurd legal rules | juristic argumentation | reductio ad absurdum | legal ethics

It is uncontroversial that the validity of Roman jurists' law merges with its interpretation. For this reason in Roman law there is no place for absurd legal rules. Absurdity in juristic language equals to „invalidity". The concept is explained in this way by one of the greatest classical Roman lawyers – Papinian. He employs the remedy of *reductio ad absurdum* not as often as the renowned polemicists Javolen, Celsus and Paulus, but – as Franz Wieacker emphasized – he does so with a visible ethical switch. It is probably due to the high position of Papinian in the imperial administration and his proximity to the emperor.

Tomasz Giaro

"Der allgemeine Teil: Physik und Metaphysik. Zivilistik in Zeiten der Dekodifikation" (The General Part: Physics and Metaphysics. Civil Law in the Times of Decodification)

in Christian Baldus, Wojciech Dajczak (eds.), *Der allgemeine Teil des Privatrechts. Erfahrungen und Perspektiven zwischen Deutschland, Polen und den lusitanischen Rechten* (Frankfurt am Main: Peter Lang, 2013), pp. 47–68
Original language: German

Keywords: German Pandectists | general part of civil law | dogmatic fruitfulness | legal personality | decodification

German Pandectists intended to make civil law a science (and, to that end, generalized the normative material), and this idea permeates the general part of civil law. Their strong influence is discernible in the expression „general part of civil (private) law", usually replacing the positivistic formula „general part of civil code". The dogmatic fruitfulness of the general part is analysed with regard to German and Polish legal entities which,

although granted legal capacity, lack legal personality. However, the contemporary phenomenon of decodification overshadows the future not only of the general part, but also of civil law as a whole.

Tomasz Giaro

"Verità fattuale e verità normativa nell'argomentazione della giurisprudenza romana" (Factual and Normative Truth in the Argumentation of Roman Jurisprudence)

in Cosimo Cascione, Carla Masi Doria (eds.), *Quid est veritas? Un seminario su verità e forme giuridiche* (Napoli: Satura, 2013), pp. 359–380
Original language: Italian

Keywords: quaestio iuris | quaestio facti | factual truth | uncertainty | normative truth | verisimile | verius

The Roman distinction between *quaestio iuris* and *quaestio facti* is fundamental for any legal discipline. A reflection on factual questions, which are mostly questions of will (*quaestio voluntatis),* evinces ever more factual items for which legal notions are to be constructed. However, there is no terminological distinction between factual and normative truth: only at the level of uncertainty the one of facts is designed by the concept of verisimilitude (*verisimile*) and the one of legal interpretation by the concept of „nearer to the truth" (*verius*).

Tomasz Giaro

"Some Prejudices about the Legal Tradition of Eastern Europe"

in Bronisław Sitek, Jakub J. Szczerbowski, Aleksander W. Bauknecht (eds.), *Comparative Law in Eastern and Central Europe* (Cambridge: CUP, 2013), pp. 26–50

Keywords: European legal tradition | Eastern Europe | backwardness | civil codes of the 19th century | "real socialism"

The following prejudices, widespread in the Western, but well-known also in the Eastern legal scholarship, are analysed: Eastern Europe was identical with the legal area of Byzantium; Eastern Europe never experienced the reception of Roman Law; Eastern European law was not backwards, but simply different; the civil codes of the 19th century destroyed the unitary legal culture of Western Europe; the East made no contribution to the

European legal tradition; "real socialism" represented time wasted for European legal history; there is still a distinct legal tradition of Eastern Europe.

Tomasz Giaro

"Comparing German and Polish Private Law. Preliminary Notes"

(2013) 56 Studia Iuridica, pp. 9–15

Keywords: BGB | Polish Civil Code of 1964 | its doctrinal origins | interwar experience

The long Roman law tradition in Germany contrasts with its almost complete lack in Poland. However, even if we begin the comparison only with the German BGB of 1900, the Polish system is one generation younger. The civil code of 1964 was based to a large extent upon the interwar experience. Owing to its traditional foundations, this code, despite its socialist heritage, has remained in force until today, albeit with modifications. However, its doctrinal origins are still unknown. Under communism, legal borrowings from the West were a politically perilous subject. Afterwards, this silence assumed the opposite function to underplay the communistic components.

Tomasz Giaro

"The East of the West. Harold J. Berman and Eastern Europe"

(2013) 21 Rechtsgeschichte – Legal History, pp. 193–197

Keywords: Harold J. Berman | Paul Koschaker | reception of Roman law | Western Europe | Central Eastern Europe | canon law

Harold J. Berman turned common views on European legal history on their head. He falsified the traditional Romanist doctrine of Paul Koschaker which limited medieval Europe to the area of reception of Roman private law, i.e. to Western Europe alone. To the contrary, Berman, who considered canon law as the main factor of European legal development, extended the borders of Europe also to East Central European countries, such as Poland and Hungary. Moreover, Berman's emphasis on canon law, which embraced also public law, allowed the inclusion of English common law as part and parcel of Western legal tradition.

Tomasz Giaro

"Transfers von Traditionen. Zum Rechtswechsel auf dem Balkan (Transfers of Traditions. Legal Change in the Balkan Area)"

(2014) 58 Studia Iuridica, pp. 95–104
Original language: German

Keywords: Balkans | Byzantium | Roman-Byzantine law | tradition | transfer | Ottoman Empire | Muslim law

The Balkans were originally subject to Byzantine influence. Together with orthodox Christianization they received simplified versions of Roman-Byzantine law. However, in the 15th century the Ottoman conquest closed the Byzantine millennium. Muslim law could not be forced upon the Balkan population, which in great prevalence retained its Christian faith, but on the other hand the region remained isolated from Western influence. Only during the gradual retreat of the Ottomans in the 19th century, alongside with the expansion of capitalism, did massive reception of Western codifications and constitutions in the Balkans take place.

Tomasz Giaro

"Russia and Roman Law"

(2015) 23 Rechtsgeschichte – Legal History, pp. 309–319

Keywords: Russian Empire | Roman private law | reception | constitutionalism | Soviet law | civil law

The paper examines a fundamental book on Roman law in Russia, written by Martin Avenarius, entitled *Fremde Traditionen des römischen Rechts*. Reception of Roman law in Russia, which occurred only in the 19th century, constitutes an argument in support of the European character of the country. In fact, the Russian national-conservative movement of Slavophiles identified hatred towards modern Western law with ancient Roman law. It transpires that during the 19th century both Roman private law andconstitutionalism were imported from the West. Finally, the question as to whether Soviet law was an autonomous system, distinct from continental civil law, is discussed.

Tomasz Giaro

"Transnational Law and its Historical Precedents"

(2016) 68 Studia Iuridica, pp. 73–85

Keywords: transnational law | ius civile | ius gentium | canon law | utrumque ius | principle of personality (territoriality) | capitulations | Russian Empire | Prussian Kingdom

The concept of transnational law, invented by Philip C. Jessup in 1956, is by many scholars identified exclusively with the global law of the 21st century. However, in legal history we find numerous much older cases of law making which get along without any intervention of state agencies. Being born beyond the nation-state, they are subject to transborder application. This serves as a springboard to analyze ancient Roman *ius civile* and *ius gentium*, medieval canon law, *utrumque ius*, old-European capitulations and cases of legal pluralism retrievable from the Russian Empire during the 19th century.

Tomasz Giaro

"От современного soft law к античному soft law" (From contemporary soft law to ancient soft law)

(2016) 2 Правоведение. Известия высших учебных заведений, pp. 198–219
Original language: Russian

Keywords: soft law | hard law | Roman law | legal discourse | ius respondendi | ius controversum | responsa | consilia

Soft law is not fully binding, but not fully ineffective. The concept goes back to statements made in the 1970s by Lord Duncan McNair. By that time, however, Norberto Bobbio had already emphasized that medieval canon law knew numerous optatives, *responsa* and pieces of advice (*consilia*). And classical Roman law was soft law *par excellence*. In its vast vault of different opinions, legal rules emerged gradually in the legal discourse. This implied their gradual normativity corresponding to their acceptance within the legal community. In late antiquity jurists' law disappeared. Only Italian glossators resuscitated the ancient practice of giving advice rather than commanding.

Tomasz Giaro

"L'expérience de l'absurde chez les juristes romains" (Roman Lawyers and their Experience of Absurd)

in Zuzanna Benincasa, Jakub Urbanik (eds.), *Mater familias. Scritti romanistici per Maria Zabłocka* (Warszawa: The Raphael Taubenschlag Foundation – The Journal of Juristic Papyrology, 2016), pp. 243–267
Original language: French

Keywords: absurdity | juristic interpretation | distinction | reinterpretation | generalization | fiction

Absurdity is clearly not a legislative, but a juristic category which falls under the heading of juristic interpretation. Within a legal system this interpretation may have the affirmative-conservative function on one side and the critique-innovational function on the other. The main remedies against absurdity, which are analyzed one by one, are distinction, reinterpretation, generalization and fiction. Distinction commands the most support among Roman jurists, whereas fiction, which infringes the principle of identity, is treated in a cautious and restrictive way.

Tomasz Giaro

"Die Lehre vom Einkommen vom Standpunkt des gemeinen Civilrechts" (The Doctrine of Income from the Standpoint of the Common Private Law)

in Serge Dauchy, Georges Martyn, Anthony Musson et al. (eds.), *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing*, (Cham: Springer, 2016), pp. 416–419
Original language: German

Keywords: Petrażycki | drafts of German Civil Code (BGB) | science of legal policy | law & economics

Petrażycki was a Polish legal philosopher who between 1891–96 partook in the Russian Seminar of Roman Law in Berlin. Being only in his mid- to late 20s, Petrażycki participated in the lively debates of German jurists about drafts of the German civil code (BGB), which was eventually published in 1896 and entered into force in 1900. The major literary work of Petrażycki, *Die Lehre vom Einkommen*, provoked an extensive discussion in Germany. The core of this "Doctrine of Income" is the science of legal policy

(*Civilpolitik*), designed in the postscript to the first volume as an applied discipline of the psychological theory of law.

Tomasz Giaro

"Петражицкий и ранняя история law & economics" (Petrażycki and the Early History of Law & Economics)

in Г.Ф. Гараева, Я. Турлуковски (eds.), *Мысль Л.И. Петражицкого и современная наука права*, Краснодар 2016, pp. 128–149
Original language: Russian

Keywords: Petrażycki | science of legal policy | law & economics | private law | empirical science

The kernel of the science of legal policy, initiated by Leon Petrażycki at the end of the 19th century, was the discipline today called law & economics. In respect of the relationship between private law and political economy, Petrażycki gives precedence to the latter, since he recommends examining any legal solution from the standpoint of its economic efficiency. He assumed political economy as the basic theory of civil law because it was the only discipline that engaged empirically with phenomena that constituted an object of private law. The paper also discusses the similarities between the science of legal policy and law & economics.

Kacper Gradoń

"Countering Lone Actor Terrorism – Preliminary Findings of the PRIME Project"

(2016) 20 Problemy Współczesnej Kryminalistyki, pp. 45–59

Keywords: extremism | radicalization | terrorism | lone actors | lone wolf terrorism | PRIME | counter-terrorism | police | intelligence | special services | Internet monitoring | open-source intelligence | OSInt

The paper presents de-classified preliminary findings of the European Commission FP7 PRIME Project, dealing with extremism, radicalization and lone-actor terrorism ("lone wolf terrorism"). Paper provides the results of the research devoted to the existing counter-measures used against such threats during the stages of Attack Preparation and Attack Execution. Thirteen such Police and Intelligence methods were analysed

from the point of view of their effectiveness, ease of use and costs associated therwith, from the point of view of law-enforcement agencies and security services.

Kacper Gradoń

"Placing „lone-actor terrorism" in context. Who are we dealing with and what threat do they pose? Preliminary results of the FP7 PRIME Project"

(2016) 67 Studia Iuridica, pp. 165–180

Keywords: extremism | radicalization | terrorism | lone actors | lone wolf terrorism | PRIME | counter-terrorism | police | intelligence | special services

Findings of the EC FP7 PRIME Project, dealing with extremism, radicalization and lone-actor terrorism. A context analysis of lone actor threat, including differences in culture and legislation across Europe, as well as operational constraints, is proffered. The paper presents definitional issues related to "lone wolf terrorism", provides results of international surveys and summarizes the problems and obstacles to successful and efficient use of operational procedures available to law-enforcement agencies, based on data gathered through engagement activities with security practitioners.

Kacper Gradoń

"'CSI: Warsaw' Crime Scene Investigation Training at the University of Warsaw"

(2016) 62 Studia Iuridica, pp. 197–209

Keywords: Crime Scene Investigation | forensic sciences | criminalistics | CSI effect | CSI: Warsaw | workshops | law enforcement | criminal procedure | law of evidence | teaching innovations

Presentation of the modern and innovative, hands-on Crime Scene Investigation workshops designed and conducted at the Faculty of Law and Administration, University of Warsaw. The paper describes the outline and structure of the course, providing a description of students' selection process, the nature of the highly realistic real-time exercises and their assessment, as well as the practical effects for the course's alumni entering the job market in the legal and law-enforcement professions.

Kacper Gradoń

"Crime Science and the Battlefield of the Internet. Securing the Analogue World from the Digital Crime"

(2013) 11(5) IEEE Security & Privacy, pp. 93–95

Keywords: computer security | computer crime | Internet | behavioural science | crime science | future crimes | cybercrime | open-source intelligence

Crime science contributes to the understanding of the fundamental issues of security in cyberspace. The paper confronts the traditional understanding of cybercrime with newly emerging phenomena, where the Internet is simply a tool to commit criminal and terrorist acts in real-life scenarios. The idea of a new criminal battlefield presents a future-oriented, predictive approach to the latest challenges that the Internet and related technologies bring to law enforcement and criminal justice systems.

Kacper Gradoń, Agnieszka Gutkowska, Piotr Karasek, Emily Corner, Noemie Bouhana, Amy Thornton

PRIME Context Analysis Report Public Summary

(Brussels: Cordis, 2016)

Kewords: extremism | radicalization | terrorism | lone actors | lone wolf terrorism | PRIME | counter-terrorism | police | intelligence | special services

Summary of the classified Report of the European Commission FP7 PRIME Project presenting a description of identified contextual elements which may affect relevance, adoption, implementation or exploitation of PRIME final deliverables, including differences in culture and legislation across Europe, as well as operational (law-enforcement-related and stakeholder-identified) constraints. The document presents a methodological approach and a detailed summary of Project activities and research findings.

Kacper Gradoń, Agnieszka Gutkowska, Piotr Karasek

Counter-Measures Review Report Public Summary

(Brussels: Cordis, 2016)

Keywords: extremism | radicalization | terrorism | lone actors | lone wolf terrorism | PRIME | counter-terrorism | police | intelligence | special services | Internet monitoring | open-source intelligence | OSInt

This summary of the classified Report of the European Commission FP7 PRIME Project presents findings on the existing counter-measures used to defend against lone actor extremist events, identifies the existing strengths and weaknesses of these methods and highlights areas to be addressed by further research activity. The Report focuses on the counter-measures which are presently employed at all three stages of the lone-actor threat model: radicalization, attack preparation and attack.

Aleksander Grebieniow

"Die Unkenntnis der Vermögenslage im Sklavenrecht am Beispiel des peculium duplicis iuris aus Ulp. 29 ed. D. 15.1.19.1-2" (Ignorance about the asset position of a slave: 'peculium duplicis iuris' as an example, Ulp. 29 ed. D. 15.1.19.1-2)

in Benedikt Forschner, Constantin Willems (eds.), *Acta Diurna. Beiträge des IX. Jahrestreffens Junger Romanisten* (Wiesbaden: Harrasowitz Verlag, 2017), pp. 119–138
ISBN 978-3-447-10737-2
Original language: German

Keywords: Roman law | law of slavery | contract law

The paper discusses an intriguing fragment from the Justinian's Digest about so called *peculium duplicis iuris*, which means a slave subjected to the power of two masters. Both of them give him a *peculium* to administer, which causes a problem when a third party does not know whether the debtor is the proprietary or the usufructuary. The paper contains an exegesis of D. 15.1.19.1-2 (Ulp. 29 ed.) and an attempt to explain the problem of failing recognition of the person of a debtor/creditor in Roman law.


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Hanna Gronkiewicz-Waltz

"On the conflict of interest between supervision and monetary policy"

(2016) 78(3) Ruch Prawniczy, Ekonomiczny i Socjologiczny, pp. 11–20

Keywords: European System of Central Banks | European Central Bank | monetary policy | credit institution | conflict of interests

The discussion involving the conflict of interest between the implementation of monetary policy and banking supervision influences the search for an institutional solution to the question of inclusion or non-inclusion of a supervisory function among the tasks of a central bank. This situation would have probably continued until today had it not been for the financial crisis of 2008–2013. Despite the appointment of the European Banking Authority in 2011, supervision of the main EU financial institutions has recently been vested in the European Central Bank. Whether this decision was the right move will only be known in years to come when the effectiveness of this supervision has been assessed.

Robert Grzeszczak (ed.)

Challenges of good governance in the European Union

(Baden-Baden: Nomos, 2016)
ISBN print: 978-3-8487-3180-0, ISBN online: 978-3-8452-7545-1
DOI: 10.5771/9783845275451-23

Keywords: European Union | European law | good governance | good administration | European public administration

Implementation of the principle of good governance includes a number of detailed initiatives. The book deals with one of the most significant problems, that is the functioning of the public sector in theory and in practice. The objectives of this book were formulated in reaction to a discussion that was started a decade ago concerning the role of the state in the 21st century, the future of integration processes and the facing of challenges posed by globalization. Currently, good governance is associated with an improvement of management methods in the European Union in all aspects of the realisation of domestic and EU policies, going beyond the issues of state capacity and the effectiveness of management. The importance of issues related to social participation in the work of administration and verification of public authorities' (and administration) decisions is

growing. Indirectly, all of the aforementioned is tied to social legitimisation of public performances in the European Union.

Robert Grzeszczak, Beata Jędrzejczak

"Die Selbstgefährdung: Gesundheitsgefährdendes Verhalten als Legitimation für Schlechterstellungen" (Self-endangerment: Health-endangering behaviour legitimizes worse treatment)

in Claus Dieter Classen, Bernard Lukanko, Dagmar Richter (eds.), *Diskriminierung aufgrund der Gesundheit in alternden Gesellschaften – Deutschland und Polen vor neuen Herausforderungen,* (Berlin: Berliner Wissenschaftsverlag, 2015), pp. 183–207
ISBN 978-3-8305-3444-0
Original language: German

Keywords: health | public health | Polish civil law | social justice

The subject of discussion in this article is the social responsibility of the individual for the state of his health. This is the framework in which the research problem raised in the title of the article is reflected. The authors describe problems associated with the state of health of individual actors, the risk of liability and liability in civil law based on individual guilt, which are the starting points for consideration of differential treatment of the individual. These factors are based on the principles of social justice and equality before the law and on possible deviations from the above-mentioned principles.

Robert Grzeszczak

"The European transformation of the legislative, executive and judicial power in Poland"

in Ireneusz P. Karolewski, Monika Sus (eds.), *The Transformative Power of Europe* (Baden-Baden: Nomos, 2015), pp. 19–36

Keywords: EU affairs | executive power | Polish public administration | transformation of judicial power

The aim of this article is to analyse the transformative power of the EU with regard to the Polish system of governance. Europeanisation of Polish law, politics, economy, culture and society has been in progress since the 1990s. One can differentiate between two stages of Europeanisation:

before and after Poland's EU accession. Of course, most modifications related to the Europeanisation of law and the system of governance which are similar, if not the same, in all EU member states as well as the states associated with the EU. The author advances the thesis that the more the structure of the political and legal system of a member state differs from that of the EU, the more visible is its transformative power. This explains why the transformative power of the EU varies from one member state to another.

Robert Grzeszczak

"Die Arbeitnehmerfreizügigkeit und ihre Einschränkungen am Beispiel Polens und Deutschlands" (The Freedom of Movement of Workers and its Restrictions. The Case of Poland and Germany)

in Dagmara Jajeśniak-Quast (ed.), *Arbeitnehmerfreizügigkeit zwischen Deutschland und Polen – eine Zwischenbilanz aus unterschiedlichen Perspektiven* (Berlin: epubli, 2014), pp. 35–45
ISBN 978-3-8442-9863-5

Keywords: freedom of movement for workers | European law | common market | principle of solidarity

Every EU citizen has the basic right to work in all countries of the European Union. Since the EU expansion of 2004, however, the old EU countries are allowed to protect their job market from workers from new Member States for a transitional period of up to seven years. With the EU expansion of 2004, most of the 15 states that already belonged to the EU decided to either open their job markets for new members after a transitional period or to open them only partially. Only Great Britain, Ireland and Sweden opened their job markets completely and immediately. In Germany, little notice was taken of the decision to apply transitional provisions to Romania and Bulgaria as of 2007. But increasingly voices were heard in the media of the 2004 Eastern European member countries, complaining about second class membership in the EU, and urging that all restrictions be lifted.

Robert Grzeszczak

"From government to governance: the challenge of good governance in the European Union of crisis time"

(2016) 5(1) GSTF Journal of Law and Social Sciences
Print ISSN: 2251-2853
E-periodical: 2251-2861
http://law-conference.org/index.html#sthash.bnbwy0LN.dpuf

Keywords: good governance | European law | European Union

The analysis concerns one of the problem of the functioning of the public sector in theory and in practice. The article aims at presenting the concept of good governance, recommended initiatives and forms of implementation as well as answering the question of how the crisis within the EU influences the performance of integration tasks and the condition of Member States. The first objective of the article is the hypothesis that the 21st century is the time of transition from government to governance, which is connected with the imperative of introducing a good governance system in the EU and in Member States. The next objective is to precisely and systematically analyse the notions which underpin the good governance system to be implemented in the EU.

Krzysztof J. Kaleta

"Between Reflexivity and Effectiveness: Dilemmas of the Democratic Legitimacy of Constitutional Justice"

in Péter Cserne, Miklos Könczöl, Marta Soniewicka (eds.), *The Rule of Law and the Challenges to Jurisprudence. Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook* (Frankfurt am Main: Peter Lang, 2014), pp. 113–123.
ISBN: 978-3-63164381-5, ISSN 21918317

Keywords: constitutionalism | democracy | constitutional justice | constitutional court | legitimacy | reflexivity

In the paper the author analyses the impact of institutional changes in a new constitutional order on the normative requirements (formulated in contemporary philosophical discourse) concerning legitimacy of constitutional judges. He underlines that from a contemporary social science perspective legitimacy is perceived in terms of "effectiveness" of human rights protection. He argues that such an approach needs to be com-

plemented by the normative requirement of 'reflexivity' of judges which needs to be considered in two equally important dimensions: ethical and institutional.

Krzysztof J. Kaleta

"Constitutional Justice Beyond Liberal Constitutionalism"

in Krzysztof Budziło (ed.), *IX World Congress of Constitutional Law (Oslo, 16–20 June 2014). Contributions by Polish Scholars. Studia i Materiały Trybunału Konstytucyjnego* (Warszawa: Biuro Trybunału Konstytucyjnego, 2015), pp. 29–49
ISBN: 978-83-87515-82-9, ISSN: 1426-1030

Keywords: constitutionalism | democracy | constitutional justice | constitutional court | liberalism | solidarity

In the paper the author argues that a new constitutional order forces a change of perspective in considering the role and legitimacy of constitutional review by the judiciary and its relation towards democratic axiology. He starts his analysis with a reconstruction of the role of constitutional review in a traditional model of liberal constitutionalism. He attempts to describe a new paradigm of a constitutional institution's legitimacy in the era of transformation of the public sphere. The authors argues that under new circumstances one crucial function of a constitutional court is to reinforce solidarity bonds within the community.

Krzysztof Koźmiński, Michał Jabłoński

"Liability for Compensation due to Unlawful Exercise of Official Authority – Polish Experiences and Hopes"

in Joanna Banasiuk, Tymoteusz Zych (eds.), *State of Democracy, Human Rights and the Rule of Law in Poland Recent Development* (Warsaw: Ordo Iuris, 2016), pp. 164–177

Keywords: liability | unlawful exercise of authority | Poland

At first glance it may seem that the Polish regulations that have been in place for years are satisfactory and that anyone who has suffered from public officials' abuse of power, sluggishness or mistakes can rely on a simple and convenient way to receive their due compensation. However, recent empirical research conducted by the "Laboratory of Law and Econ-

omy" Foundation shows that the existing scheme displays a number of dysfunctions that actually hinder, delay, or even exclude the procedure to claim compensations granted to citizens.

Krzysztof Koźmiński, Michał Jabłoński

"10 years of the Polish Act on Lobbying Activity – 10 Years of Disappointments"

(2016) 68 Studia Iuridica LXVIII, pp. 105–123

Keywords: lobbying | Poland | legislation

The aim of this paper is to present the main solutions adopted in the Polish Act on lobbying activity in the law-making process of 7 July 2005, with particular emphasis on the dysfunctions of this regulation. Among the many weaknesses, some must be explicitly identified: the Act ignores the possibility of lobbyists influencing the law-making activities of the President, parliament bodies, the National Broadcasting Council and the decision-making bodies of local self-government and local government administration bodies. In addition, it does not envisage a public hearing procedure, and provides a defective definition of lobbying activity and the size of penalties for violation of the applicable limitations on lobbying.

Adam Krzywoń

"La Constitución ante el pasado: reflexiones en torno a la transición democrática de Polonia después de 1989" (Constitution and the past: reflections on the democratic transition in Poland after 1989)

in Miguel Carbonell, Oscar Cruz Barney (eds.), *Historia y Constitución. Homenaje a José Luis Soberanes Fernández* (México: Universidad Nacional Autónoma de México, 2015), pp. 257–276
ISBN 978-607-02-7940-9

Keywords: democratic transition | rule of law | communist past | lustration

The aim of the article is to explain the problems arising from the democratic changes that took place in Poland in 1989. The article describes some situations that required the adoption of a retrospective perspective (lustration, the need to evaluate the constitutionality of laws adopted during martial law). It is pointed out that the conditions of the democrat-

ic rule of law require that a settlement with the communist past shall be based on constitutional rules and respect for the rights and freedoms of individuals.

Adam Krzywoń

"Fuentes del constitucionalismo moderno: la Constitución polaca del 3 de mayo de 1791 sobre el fondo de otros documentos de la época de la Ilustración" (Sources of modern constitutionalism: the Polish Constitution of 3 May 1791 against the background of other constitutional documents of the Enlightenment)

(2015) 29 Revista Mexicana de Historia del Derecho, pp. 183–210

Keywords: first constitutions | Enlightenment | Constitution of 3 May 1791

The article contains a detailed analysis of the Constitution of 3 May 1791, Europe's first and the world's second modern constitution. It shows the document against the background of other constitutions of the Enlightenment. A comparison of arrangements pertaining to the legislature and the judiciary is offered, and the relevant provisions of the French and American Constitutions are examined. The last part of the article is a translation of the text of the Constitution of 3 May 1791 into Spanish.

Bartosz Lewandowski

"Prosecution service law"

in Joanna Banasiuk, Tymoteusz Zych (eds.), *State of Democracy, Human Rights and the Rule of Law in Poland Recent Development* (Warsaw: Ordo Iuris, 2016), pp. 126–139
ISSN 9788394021436

Keywords: prosecution office | state of law | democracy | human rights

The chapter concerns the new Polish prosecution service law enacted on 28 January 2016, the principal changes it introduced and its practical ramifications. A juxtaposition of advantages and disadvantages of the regulation is made, and comparative conclusions are drawn.

Bartosz Lewandowski

"The amended Police regulations"

in Joanna Banasiuk, Tymoteusz Zych (eds.), *State of Democracy, Human Rights and the Rule of Law in Poland Recent Development* (Warsaw: Ordo Iuris, 2016), pp. 140–153
ISSN 9788394021436

Keywords: police | state of law | democracy | human rights

The author discusses the 2016 amendment to the Polish Act on Police and its implications.

Bartosz Lewandowski

"The procedures of election the head of state in the Republic of Poland before the Second World War"

(2016) 2 The Lawyer Quarterly – International Journal for Legal Research, pp. 82–89

Keywords: president | election | interwar period | Poland | Czechoslovakia | legal history

The article concerns the relevant procedures governing the election of the President in the Polish and Czechoslovak legal orders in the interwar period. The Polish March Constitution of 1921 and the Constitutional Charter of Czechoslovak Republic of 1920 contain many similar provisions. By contrast, the April Constitution of 1935, which endowed the office of the head of state with sweeping powers, reflected the political orientation of its creators. The 1935 Constitution was tailored to the personal needs of Józef Piłsudski by the political option in power in Poland after 1926.

Karol Muszyński

"Factors behind the growth of civil law contracts as employment contracts in Poland. A study on labour law violations"

(2016) 1(158) Prakseologia, pp. 323–359

Keywords: civil law contracts | labour law violations | segmentation of labour market | Poland

The article summarises the data on the use of civil law contracts (CLCs) as employment contracts, as well as the findings of other researchers on segmentation of the Polish labour market and attempts to conceptualise the role, dynamics and distribution of the illegal use of CLCs. The article divides the reasons behind this into structural (unclear labour law notions, employment protection regulations, construction of the tax wedge, bargaining power of the employees, weakness of the Labour Inspectorate, and overall low respect for the law) and time-specific issues (economic uncertainty after the economic crisis, growth of temporary work agencies, minimum wage policy, as well as the conceptual crisis within the labour law doctrine and jurisprudence regarding the core notions of the labour law). The article argues that CLCs serve as a method of minimal formalisation of relations between an employer and an employee that fall between informal employment and Labour Code contracts.

Karol Muszyński

"Bifurcation of working time and its fate in Poland today"

(2015) Forum Socjologiczne, *Special Issue 1: Social boundaries and meanings of work in the 21st-century capitalism*, pp. 199–211

Keywords: working time | segmentation of labour market | post-Fordism | Poland

The article aims at depicting the idea of bifurcation of working time and verifying the possibility of its application to an emerging economy such as Poland. The paper espouses the bifurcation idea, the applicability of which was verified with regards to highly competitive countries, in the wider context of the post-Fordist shift in capitalism. Empirical data confirms that bifurcation has not occurred in Poland yet, but an analysis of working time in different sectors gives some indication that familiar trends may be emerging.

Maria Nowak

"The hereditary rights of the extramarital children in light of the law of papyri"

in Béatrice Caseau, Sabine R. Huebner (eds.), *Inheritance, Law and Religions in the Ancient and Mediaeval Worlds* (Paris: L'ACHByz, 2014)

Keywords: illegitimacy | Gnomon of Idios Logos | Roman Egypt | Hellenistic Egypt | juristic papyrology

This article aims to present the hereditary situation of extramarital children in Graeco-Roman Egypt, between the first and third centuries AD. It discusses whether the legal status of apator, chrematidzon metros, etc. was inferior to that of legitimate offspring. First, it discusses the regulations concerning extramarital children present in jurisprudential sources, specifically the Gnomon of Idios Logos; second, papyri which provide information about the succession of illegitimate offspring.

Maria Nowak

Wills in the Roman Empire. A Documentary Approach [= The Journal of juristic Papyrology Supplement Series XXIII]

(Warsaw: The Taubenschlag Foundation, 2015)

Keywords: testamentary practice | Roman testament | Roman law | juristic papyrology

The monograph aims at reconstructing everyday testamentary practice in the Roman Empire, namely how people applied testamentary law in everyday life: how they made their wills and opened them and how the content of wills was formulated. The model of testamentary practice is compared to Roman law and local customary laws so that one could see how legal concepts evolved and were modified in legal practice. The book also attempts to answer the question whether Roman law (especially imperial constitutions) adapted legal phenomena developed by legal practice. These questions constitute part of a wider discussion concerning the level of knowledge and application of Roman law in the provinces after the edict of Caracalla. The book is supplemented with four appendices, where all wills from the Hellenistic, Roman, and Byzantine periods are collected (original texts with English translations) for the first time in scholarly literature.

Maria Nowak

"The Fatherless and Family Structure in Roman Egypt"

in Delfim Leão, Gerhard Thür (eds.), *Symposion 2015, Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Coimbra 1–4 Setembro 2015)*, (Wien: Österreichische Akademie der Wissenschaften, 2015), pp. 100–114

Keywords: illegitimacy | Roman Egypt | juristic papyrology

The main problem discussed in this paper is illegitimacy in Roman Egypt. In the first part of the text I discuss ways of presenting persons born out of wedlock in papyri, especially documents relating to the Roman census in Egypt. The question posed in the second part of the article is whether the ways of describing extramarital children could provide us with information concerning their position within the family structure of Roman Egypt.

Maria Nowak

"Ways of describing illegitimate children vs. their legal situation"

(2015) 193 Zeitschrift für Papyrologie und Epigraphik, pp. 207–219

Keywords: illegitimacy | juristic papyrology | Roman Egypt

This paper refers to the problem of illegitimacy in Roman Egypt and in the Roman Empire. It examines the terms applied as a description of illegitimate children in Roman Egypt and challenges the hypothesis that illegitimacy in Egypt was a Roman concept. It also aims at answering the question whether terms used to describe illegitimate children really determined their social status and whether they were formal categories or they simply served for descriptive purposes. The answer to the question of the ways of describing illegitimate children brings us to at least partial understanding of their social standing.

Tomasz Derda, Maria Nowak

"Will of [—]is daughter of Pachois from Oxyrhynchos. P. Oxy. ii 379 descr."

in Zuzanna Benincasa, Jakub Urbanik (eds.), *Mater familias. Scritti romanistici per Maria Zabłocka* (Warszawa: The Raphael Taubenschlag Foundation – The Journal of Juristic Papyrology, 2016), pp. 135–143

Keywords: papyrology | wills | Roman Egypt

Publication, translation and commentary of *P. Oxy.* II 379 descr.

Esther Garel, Maria Nowak

"Monastic Wills: The Continuation of Late Roman Legal Tradition?"

in Malcolm Choat, Maria C. Giorda (eds.), *Writing and Communication in Early Egyptian Monasticism* (Leiden, Boston: Brill, 2017), pp. 108–128

Keywords: Coptic law | Arab conquest | wills | late Roman law | juristic papyrology | Coptic papyrology

This chapter examines wills composed in Egypt shortly before and after the Arab conquest, which, with one Greek exception, are written in Coptic. The first aim is to present the changes that the testamentary model underwent at the end of the Byzantine period in Egypt, to highlight new elements which entered wills in this period, and show how some patterns of written communication survived into the post-conquest period. The second objective is to examine Coptic testamentary practice. Last but not least, the aim is to investigate the differences and similarities in legal and notarial/scribal practices in Egypt before and after the Arab conquest as well as ways of legal transmission.

Konrad Osajda

"Directors' Liability for an Insolvent Company's Debts: Comparative Law Remarks"

in *The 21st Century Commercial Law Forum – 16th International Symposium* (Beijing: Tsinghua University Press, 2016), pp. 383–389

Keywords: insolvency | wrongful trading | fraudulent trading | liability of companies' directors | director | limited liability company | creditors' protection

The aim of this paper is to compare different regimes of liability of directors of limited liability companies in case of their insolvency. It identifies two different legal instruments: wrongful trading (developed in English law) and *Insolvenzverschleppungshaftung* (developed in German law). Then it pits them against each other, and points out their most powerful and weakest features. The paper concludes that these two instruments are potentially the most important tools to protect companies' creditors, but still they do not work effectively enough in practice. As a consequence they require some amendments that, perhaps, could bring them closer to one another.

Konrad Osajda

"The New Polish Rules on Liability for the Debts of an Estate"

(2015) 6 Private Client Business, pp. 284–286

Keywords: debts of an estate | administration of estates | creditors' rights | heirs' liability

The aim of the paper is to discuss the amendment to Polish succession law concerning liability for the debts of an estate. According to the law now in force, although under Polish law transmission of the estate on death is immediate and direct, heirs (beneficiaries) are liable for the estate's debts but only up to the estate's value. The paper deals with the new legal instruments (e.g. inventory register) that tries to accommodate the needs of heirs (beneficiaries) and the estate's creditors and properly balance their legal positions.

Karolina Pasko

"Gradual Convergence in the Field of Termination for Breach of Contract: A European Perspective"

(2016) 11 Law and Forensic Science, pp. 95–102

Keywords: termination | breach of contract | termination for breach | unification of private law

National law on termination for breach of contract strictly depends on what is the concept of breach of contract and how the system of contractual remedies is structured. It also reflects the legislator's attitude towards the sanctity of contract principle and, at the same time, towards the need of protection of a debtor. Regulation of termination for breach of contract is said to be far from uniformity as each country has its own long tradition of contractual remedies reflected in national legislations. However, despite no formal convergence, the market practice, the doctrine and the jurisprudence seem to have developed some uniform trends in this field. The paper examines various national laws and their recent developments with an attempt to prove that, to some extent, a common European approach to termination for breach exists.

Karolina Pasko, Agnieszka Zarówna

"Rendering an Award under Polish Arbitration Law"

(2016) 24 Arbitration Bulletin – Young Arbitration, pp. 71–87

Keywords: arbitration | commercial arbitration | Polish arbitration law | arbitral award

An arbitral award is the visible, final product of the work of an arbitral tribunal in arbitration proceedings. The quality of arbitral awards, both as to their merits and procedural correctness, has an essential impact on the widespread perception of arbitration as a whole, and its positive or negative assessment as an alternative dispute resolution mechanism. The article presents the Polish arbitration law relating to each of the essential elements of an arbitral award and confronts it with international standards and practice.

Piotr Pomianowski

"The responsibility of professional agents for litigation in the light of disciplinary rulings"

in Barbara Bokus (ed.), *Responsibility. A Cross-Disciplinary Perspective*, (Warszawa: Studio Lexem, 2013), pp. 193–199
ISBN 978-83-936258-1-9

Keywords: professional ethics | professional associations

This paper looks at the responsibility of professional agents for litigation (attorneys and legal advisers) in Poland in the light of disciplinary rulings. The principles, according to which disciplinary courts mete out punishment, can be ambiguous while the relevant judicature is not easily accessible. It results in the fact that conducting research on these principles is seriously hindered. The author presents conclusions based on several dozens of verdicts.

Piotr Pomianowski, Andrzej Zakrzewski

"Lithuanian Statutes in Polish Historiography and Legal Thought"

in *Standards of Europe's Constitutional Heritage* (Vilnius 2013), pp. 38–46
ISBN 978-9955-688-17-4

Keywords: law of the Polish–Lithuanian Commonwealth | Lithuanian Statutes

The article concerns the significance of the Lithuanian Statutes in Polish historiography and legal thought. The statutes were one of the essential sources of law in the Polish–Lithuanian Commonwealth. The paper describes the most important academic works on that subject. Moreover, the authors notice that Polish 19th century scholars were interested in The Third Statute because of two major reasons. Firstly, patriotism underlay motivations to study the institutions of pre-partitional Poland. Purely practical aspects, particularly relevant shortly after the fall of the Commonwealth, turned out to be the second motive (in some cases the Statute remained a binding source of law).

Piotr Pomianowski

"The beginning of secular divorce in Poland. The Napoleonic Code in the practice of Polish courts"

in Sebastiaan Vandenbogaerde (ed.), *(Wo)Men in Legal History*, Lille 2016, pp. 171–187
ISBN 2-910114-33-3

Keywords: marriage and divorce, French Revolution and Napoleon, Napoleonic Europe, divorce

This paper looks at civil divorce introduced in the Duchy of Warsaw by the provisions of the Napoleonic Code. It was initially believed that the number of civil divorces in the Duchy never exceeded ten and that the Napoleonic Code divorce regulations remained a dead letter of the law. However, a recent study of the remaining sources, including judicial files and marriage registers, has shown that the scale of civil divorces was significantly larger, with at least several hundred cases recognized by civil tribunals of the Duchy of Warsaw between 1808 and 1812. Most petitioners for a divorce were women and 80% of their petitions were successful. Women would also be given custody of minors and child maintenance. Civil divorce was sought by representatives from the whole spectrum of society (gentry, craftsmen, tradesmen, workers). Regarding the religious affiliation of the petitioners, Catholics constituted the largest group.

Izabela Prager

"A Bridge Too Far, or Does the European Union Need a Binding Say on Pay"

in Jarosław Bełdowski, Katarzyna Metelska-Szaniawska, Louis Visscher (eds.), *Polish Yearbook of Law and Economics Vol. 5* (Warszawa: CH Beck, 2015), pp. 111–124
ISBN 978-83-255-7828-2

Keywords: say on pay | shareholder voting | corporate governance | agency costs

Say on pay, or shareholder vote on executive remuneration, has been attracting scholarly attention ever since its introduction in the UK in 2002. However, the new European Commission Proposal for amending Directive 2007/36/EC sheds a new light on the entire say on pay debate. Namely, the 28 EU Member States will soon have to decide whether European

capital markets need a binding vote on executive remuneration. In view of this initiative, the aim of this paper is to analyse the existing say on pay mechanisms as well as to assess the efficiency of say on pay as a corporate governance instrument.

Jan Rudnicki

"The Axiology of Military Wills. A Comparative Analysis"

(2015) 2 European Journal of Comparative Law and Governance, pp. 5–18

Keywords: military will | forms of will | testament | succession law | military law | Roman law

The institution of a military will, derived from Roman imperial law, has developed into many various models. Despite crucial differences, all the models can be described as special forms of testaments restricted to soldiers and sailors. The differences, on the other hand, prove that each model bears testimony to distinct ideas and principles in testamentary law. Every lawmaker has to decide how to balance two colliding principles: freedom of testation and security of legal circulation. The case of a military will gives an opportunity to look at some fundamental models for solving this collision.

Jan Rudnicki

"The Hans Island Dispute and the Doctrine of Occupation"

(2016) 68 Studia Iuridica, pp. 307–320

Keywords: Hans Island | occupation | international law | Arctic sovereignty | Denmark | Canada

The tiny Hans Island, claimed by both Canada and Denmark, is the last disputed land in the Arctic. The aim of this article is to analyse whether this sovereignty question can be resolved by reference to the doctrine of occupation. Historical examples and doctrinal views lead to the first level conclusion that in certain circumstances a land that belongs to no one can be occupied by a state almost merely by means of symbolic actions. Further considerations focus on the questions whether Hans Island should be considered as possessing such qualities and if so, whether any of the con-

testants has ever performed any actions that can be interpreted as taking it into its possession.

Paweł Skuczyński

The Status of Legal Ethics

(Frankfurt am Main: Peter Lang, 2013)
(ISBN 978-3-631-64133-0, E-ISBN 978-3-653-03089-1, DOI 10.3726/978-3-653-03089-1)

Keywords: legal ethics | applied ethics | professional ethics | moral responsibility | critical theory

The basic aim of the study is to describe the ambiguity of the term *legal ethics* in the context of different traditions and conceptions. The three most important traditions of legal ethics are: the French, with the categories of virtue and independence, the American, with the ideas of loyalty and professional duties, and the German, with professional roles and obedience. On that base, a theory of critical legal ethics is developed. It claims that the subject of legal ethics consists of three planes – deontological, social and moral. Further, it is examined whether chosen legal-philosophical conceptions contain any legal ethics conceptions and what could be an interdisciplinary research program of legal ethics.

Paweł Skuczyński

"The Problem of Scope of Professionals' Moral Responsibility and Its Applications in Legal Ethics"

in Dariusz Jemielniak (ed.), *Legal Professions at the Crossroads* (Frankfurt am Main: Peter Lang, 2014), pp. 161–178
ISBN: 9783653995565, DOI: 10.3726/978-3-653-03484-4

Keywords: legal ethics | moral responsibility | role-responsibility | just defences | adversary system excuse

In the paper an attempt is made at a partial analysis of the judicial independence principle and three interlinked theses are signalled. Firstly, in the face of a constitutional crisis, lawyers take three main types of attitudes which can be described in a simplified way as positivist, political and civil. Secondly, the reference of this typology concerning lawyers to judicial independence in general reveals its performative nature. Thirdly,

such a formulation of independence allows one to understand better, and maybe even solve, some problems related to the constitutional crisis. The aim of this article is not to consider the possibility of interpreting the constitutional crisis through the prism of the constitutional court paradigm and the judiciary with opposing positions.

Paweł Skuczyński

"The Attitudes of Lawyers Towards the Constitutional Crisis and the Independence of the Judiciary"

in Grzegorz Borkowski (ed.), *The Limits of Judicial Independence?* (Warszawa–Toruń: TNOiK „Dom Organizatora" Toruń, 2016), pp. 149–166
ISBN: 978-83-7285-802-3

Keywords: constitutional crisis | judicial independence | judicial ethics

There are three interpretations of moral responsibility of lawyers. The simplest of them limits moral responsibility of a subject to the sphere of duties resulting from social relations connected directly with the subject, in particular professional roles. The second interpretation of moral responsibility of the subject broadens its scope: the subject is not only accountable for the sphere of a duty determined by social roles played, but also for the sphere in which its actions may have any sort of influence. The final concept of a subject's moral responsibility defines its scope as widely as possible. This means that it encompasses also the sphere in which it does not have any influence. Thus, it may be said that this is one's responsibility for the present state of the whole world and for this reason it is described as existential responsibility.

Marcin Stębelski

"Ausgewählte Aspekte der verfassungsrechtlichen Stellung der Kirchen und Religionsgemeinschaften in Polen in der Rechtsprechung des Verfassungsgerichtshofs" (Selected aspects of the constitutional status of churches and religious organizations in Poland in the jurisprudence of the Constitutional Court)

in Wilhelm Rees, María Roca, Balázs Schanda (eds.), *Neuere Entwicklungen im Religionsrecht europäischer Staaten* (Berlin: Duncker & Humblot, 2013), pp. 705–726
ISBN-13: 978-3428141616

Keywords: religious organizations | Constitutional Court of Poland

The article refers to the principle of equality and the principle of impartiality of public authorities in matters of personal conviction – religious or philosophical. The principle of equality has a formal meaning. The formula "all the same" is applied by the Polish Constitutional Court to mean "everyone the same". Impartiality prohibits actions which, under the guise of an aspiration to achieve equality and to implement the demands of neutrality of the state, are also associated with the promotion of a particular worldview.

Marcin Stębelski

"Parliament versus Constitutional Court. Selected Issues Pertaining to the Constitutional Dispute in Poland"

in Marcel Szabó, Petra Lea Láncos, Réka Varga, (eds.), *Hungarian Yearbook of International and European Law 2016* (The Hague: Eleven International Publishing, 2017), pp. 407–430
ISBN 978-9-46236-732-6

Keywords: Polish Constitutional Court | constitutional court | election of judges | constitutional dispute | constitutional review | Constitutional Court Act

The Article presents two problems concerning the constitutional crisis between Parliament and the Constitutional Court in Poland, ongoing since October 2015. The first involves the appointment of judges, especially the constitutional basis for the appointment of Constitutional Court judges and for the oath of office before the President (provisions regarding the oath are included in the Constitutional Court Act). The second concerns a

review of the constitutionality of the Constitutional Court Act carried out by the Constitutional Court itself, in particular its decision regarding the constitutionality of relevant procedural standards enshrined in that piece of legislation.

Krzysztof Szczucki

Proconstitutional Interpretation of Criminal Law

(Lanham: Lexington Books, 2016)
ISBN 978-1-4985-3584-7

Keywords: criminal law | constitutional law | interpretation | jurisprudence

Proconstitutional interpretation is a method of finding moral clarity in criminal law. The perception of a constitution, an observation which concerns mainly democratic states, as a source of information about values of fundamental and integrating importance to a policy, led to a method of reconciling criminal law with those values within the constitution. Approaching a constitution as a source of information about values, as a matrix within which there exists a catalogue of the most important values, without the need to reach beyond the system of positive law, makes this supposition acceptable also for those practitioners and academics who prefer a systemically imminent approach. The proposed scheme allows authorities responsible for forming and enforcing the law to take into account those values that play a significant role in social life. At the same time, it continues to embrace principles of legal reasoning, a safeguard against going into considerations reaching beyond the legal system. Not only may the method espoused in the book become applicable and, at least to some extent, adopted in Poland, but in other constitutional democracies as well.

Krzysztof Szczucki

"The Impact of Human Dignity on the Principles of Criminal Liability. The Example of Guilt"

(2016) 67 Studia Iuridica, pp. 11–31

Keywords: criminal law | constitutional law | human dignity | guilt | culpability | criminal liability

Human dignity is a well-known concept among Western countries since after World War II, when states, in an effort to create a new platform of cooperation with a view to guaranteeing peace, were looking for an axiological foundation of the new order. The findings described in the article may serve to underpin the following notions, which have to be the object of further research on relations between the human dignity principle and rules of criminal liability, guilt in particular. First, the "guilt standard" is obligatory, whenever a state intends to punish a person. Second, punishment can be meted out only to an offender with an ability to bear responsibility. In other words, only a person whose characteristic derived from the principle of dignity is fully actualized can be punished. Third, punishing should be preceded by an analysis of the degree of guilt. The more eager the perpetrator was to act against the legal system and against values protected by it, the severer punishment should be meted out. Finally, law should provide for exclusion of culpability when the human dignity principle demands one to act in a manner that is outwardly criminal, but was committed due to a motivation that ought to be excused in the light of the dignity principle.

Krzysztof Szczucki, Marta Kolendowska-Matejczuk

"Tension between human rights protection and the necessity to ensure public security in the context of Polish anti-terrorism law"

(2016) 68 Studia Iuridica, pp. 153–180

Keywords: anti-terrorism law | constitutional law | human rights | principle of proportionality | security | freedom

Recurrent events of a terrorist character, especially those occurring not in arenas of armed conflict or in countries not being – at least formally – at war with others, make it necessary not only to consider a redefinition of the state security systems, but also to ponder deeply on the human rights-inspired paradigms accepted hitherto. Regardless of one's convic-

tions and interpretation of current events, it is difficult to avoid repeating questions concerning the efficiency of public authorities and our legal system in the context of European experiences with terrorism. It is necessary to examine whether the commonly recognized constitutional and human rights standards facilitate the state in developing instruments aimed at effective prevention against terrorism. In the process of enacting and applying anti-terrorist laws one must pay heed to the mutual relations between goods protected by a given regulation and those violated thereby. As noted above, there is no freedom without security, but also there is no security without freedom. Such a tension makes a proportionality test very troublesome. The legislator should, above all, harmonize the axiological contexts of the provisions constructed thereby, so that they are orientated towards the protection of both security and freedom.

Marta Sznajder, Justyna Rasiewicz

"Poland"

in Jochen Bühling (ed.), *Patent Protection for Second Medical Uses*, (Amsterdam: Kluwer Law International, 2016), pp. 227–262
ISSN 9789041182531

Keywords: industrial property law | patents | second medical use | patent protection | infringement | patentability | enforcement | civil proceedings

Patent Protection for Second Medical Uses explains the key jurisdictional differences and challenges in protecting and enforcing second medical use (SMU) claims, including availability of protection, validity of claims, scope of protection, enforcement and infringement and investigations of SMU claims. The compendium of contributions from nineteen jurisdictions worldwide is the result of the need for a broader and more detailed exposition in SMU.

Karolina Tetłak

"UK tax breaks for the 2013 Champions League final"

(2013) 3(5) European Taxation

Keywords: taxation | UK | tax breaks | Champions League

Football stars playing for overseas teams will be exempt from UK taxation when they participate in the 2013 UEFA Champions League final, held in London this year. The Finance Act 2012 contains measures to provide tax breaks for non-resident players and team officials of non-UK football teams involved in the 2013 Champions League final in respect of income related to the final. This article will discuss the tax aspects of the club tournament, with particular regard to the taxation of the football players and team officials who have been offered an exceptional tax treatment by the UK. The background story of the introduction of the special tax regime will also be presented.

Karolina Tetłak

"The taxpayer as the unofficial sponsor of the London 2012 Olympic Games"

(2013) 13(1) The International Sports Law Journal, pp. 97–103

Keywords: UK | taxation | Olympics

A package of special tax arrangements for the 2012 London Olympics ensures a beneficial treatment for numerous people officially involved in the organization of, and participation in, the Games. British taxpayers may not realize that they are unofficial sponsors of the 2012 London Olympics. However, unlike in the case of official sponsors, there has been no negotiation or a contract with the general public which has to cover the cost of a privately-held sports event. The bargaining power of the International Olympic Committee has enabled them to demand tax free treatment and an above the law position. As a result, the Olympic Games in London have their own tax regime that constitutes a departure from the general principles of taxation in force in England.

Karolina Tetłak

"UK tax breaks for the 2014 Commonwealth Games in Glasgow"

(2013) 53(5) European Taxation

Keywords: taxation | tax breaks | UK | Commonwealth Games | sports

Foreign sports stars competing at the 2014 Commonwealth Games, which were held in Glasgow, Scotland, were expempted from taxation in the United Kingdom. The Finance Act 2013 contains measures to provide tax breaks for non-UK resident athletes involved in the 2014 Games in respect of income related to the event. To attract overseas sports heroes to the competition and ensure their smooth participation in the Games, the Government decided to provide an exemption from UK taxation for non-resident athletes on income related to their Glasgow 2014 performance.

Karolina Tetłak

"The 2014 update to art. 17 of the OECD Model Tax Convention"

(2014) 5(3) Global Sports Law and Taxation Reports

Keywords: taxation | OECD | OECD Model Tax Convention

On 15 July 2014 the OECD Council adopted the 2014 Update to the OECD Model Tax Convention (the 2014 Update). The Update includes a number of changes to Article 17 and its Commentary that were previously released for comments through the discussion draft "The application of Article 17 (Artistes and Sportsmen) of the OECD Model Tax Convention" (released on 23 April 2010). The background for these changes is provided in the report on "Issues related to Article 17 of the OECD Model Tax Convention". This article discusses the changes introduced to Article 17 of the OECD Model Tax Convention and its Commentary and aims at examining the impact of these changes on the application of double tax treaties to sportspersons.

Karolina Tetłak

"The Constitutional Review of the 2014 World Cup Law by the Brazil's Federal Supreme Court"

(2014) 5(3) Global Sports Law and Taxation Reports

Keywords: Brazil | Word Cup Law | FIFA | football

On 7 May 2014 the Brazilian Federal Supreme Court (STF) declared that the General World Cup Law was constitutional. In this unprecedented decision the Court dismissed the claim filed on 17 June 2013 by the Brazilian public prosecutor, Roberto Gurgel. Attorney-General sought the suspension of four articles of the General World Cup Law: Article 23 in which the state assumed liability for damages relating to the event; Articles 37 and 43 that authorized the payment of prize money to former players from the Brazilian World Cup winning squads of 1958, 1962 and 1970; and Article 53 exempting FIFA from paying costs on lawsuits relating to the tournament. In his filing, Gurgel questioned the articles of the General World Cup law and contended that the law violates citizens' constitutional guarantee to equal treatment. The purpose of the legislation was to implement specific guarantees in relation to hosting the World Cup which Brazil promised to FIFA at the bidding stage.

Karolina Tetłak

"Sochi 2014 Olympic Tax Legislation"

(2014) 54(4) European Taxation

Keywords: taxation | Olympic Games | Russia

The article outlines the details of the Sochi 2014 Olympic tax legislation, which has secured a highly favourable tax environment for the International Olympic Committee and its commercial partners, as well as athletes and other individuals involved in the preparation and staging of the Games.

Karolina Tetłak

"Russian anti-tax law for the 2014 Sochi Olympic Games"

(2014) 5(2) Global Sports Law and Taxation Reports

Keywords: Russian | anti-tax law | Olympic games

Russian legislation, which criminalises the dissemination of "gay-propaganda" among those under 18, enacted several months before the 2014 Sochi Winter Olympic Games, prompted a heated debate in the context of human rights. Interestingly, although the Olympic anti-tax law instituted for the most expensive Olympics in history is also controversial from a tax lawyer's and taxpayer's perspective, there has not been much discussion regarding the fiscal aspects of the Games. The package of special tax arrangements for the 2014 Sochi Olympics likewise benefits numerous individuals officially involved in the organization of, and participation in, the Games. As a result, the Olympic tzars in Sochi have their own tax regime that suspends and/or compliments the general principles of taxation in force in Russia.

Karolina Tetłak

"Tax changes in the FIFA corruption scandal"

(2015) 6(3) Global Sports Law and Taxation Reports

Keywords: taxation | football | FIFA

On 27 May 2015, Richard Weber of the United States Internal Revenue Service, together with Attorney General Loretta E. Lynch, announced charges against a number of FIFA officials. Fourteen people have been indicted in bribery and kickback schemes linked to corruption in the highest ranks of FIFA, global soccer's governing body. The investigation, which involved coordination with police agencies and diplomats in 33 countries, was described by law enforcement officials as one of the most complicated international white-collar cases in recent history. As in the case of Al Capone, it started off as a tax case and snowballed into a scandal that has rocked the soccer mafia to the core.

Karolina Tetłak

"The French tax dumping for sports mega-events: fiscal exemption for UEFA EURO 2016 and beyond"

(2015) 6(1) Global Sports Law and Taxation Reports

Keywords: taxation | football | UEFA | France

The European football championship UEFA EURO 2016 is going to be held in France from 10 June till 10 July 2016. The French government has offered significant tax incentives to create a favorable tax regime for the tournament. Furthermore, the exemption measure extends to all sports mega-events held in France and awarded to the country by the end of 2017. This article explains that such tax dumping may help set France up for success in future bidding for international sports events.

Karolina Tetłak

"Poland: Classification of income from professional sports activities"

(2016) 7(2) Global Sports Law and Taxation Reports

Keywords: taxation | Poland | sports | PIT act

Under Polish law, taxation rules applicable to income earned by resident sportspersons vary depending on the qualification of income. Any natural person who (i) has the centre of their personal or economic interests (centre of vital interests) within the territory of Poland; or (ii) resides within the territory of Poland for more than 183 days in a given tax year, has an unlimited tax obligation in Poland and is liable to pay tax on all of their income regardless of the location of the source of income (article 3(1) of the Personal Income Tax Act). Depending on how they organize their profession, sportspersons can theoretically be engaged in any of existing forms of taxation and earn all types of income. However, qualification of income earned by professional athletes has recently been one of the most disputed and controversial issues under the Polish tax rules applicable to individuals.

Jaroslaw Turlukowski

"Свобода обжалования решений собрания учасников общества с ограниченной ответственностью в польском праве" (The freedom to challenge resolutions of general meetings of shareholders of limited liability companies under Polish law)

(2014) 1 Review of the Faculty of Law at the Southern Federal University, pp. 86–91

Keywords: commercial law | limited liability company | meeting of members of limited liability company | supervisory board | Audit Commission | invalidity of transaction

The author expounds upon the legal nature of decisions of commercial companies in the context of homogeneous social relations. The nature and specificity of the right to appeal this category of decisions is analysed by reference to the relevant provisions of Polish commercial and corporate law.

Jaroslaw Turlukowski

"Универсальное и сингулярное правопреемство в современном польском наследственном праве" (Universal and singular succession in modern Polish inheritance law)

in D. Ch. Walejew, K. Rączka, Z. F. Safin, M. J. Ciełyszew (eds.) *The scientific views of professor G. F. Szerszeniewicz with the modern convergence of private and public law (on the 150th anniversary of his birth): Collected materials from the international scientific-practical conference (Kazan, 1–2 March 2013)* (Moscow 2014), pp. 522–528

Keywords: universal succession | singular succession | Polish inheritance law | *legatum per vindicationem*

The article is devoted to the problems of universal and singular succession in the light of a new institution of Polish succession law – vindication legacy.

Jaroslaw Turlukowski

"Некоторые проблемы связанные с прекращением полномочий члена правления торговых обществ в польском торговом праве" (Chosen aspects concerning the expiration of the mandate of a member of the board in commercial companies under Polish commercial law)

in R. A. Majdanyk, N.S. Kuzniecowa (eds.) *Civil Legislation: the system, relations between the branches of the law, methods of improvement" (Kiev, 25–26 April 2013)* (Kiev 2014), pp. 173–175

Keywords: Polish law | general meeting | shareholders | resolution of general meeting | organizational relationship

Polish law grants practically unlimited powers to a general meeting of shareholders regarding the appointment and removal of members of a management board. Such a situation generates, *inter alia*, questions whether a former member of the board can challenge its decisions. Remarks are also made with regard to the interplay between a member's organizational and reemployment relationships.

Jaroslaw Turlukowski

"Принятие и отказ от наследства, а также их последствия согласно польскому праву: избранные проблемы в связи с реформой наследственного права" (Acceptance and renunciation of inheritance and their consequences under Polish law: selected problems related to the reform of inheritance law)

(2016) 1 Law of Succession, pp. 44–48
ISSN 2072-4179

Keywords: Polish inheritance law | inheritance | acceptance of inheritance | refusal of inheritance | liability of heirs for the debts of the testator

The paper sheds light upon a selection of basic problems given rise to by regulation of acceptance and rejection of the inheritance in Polish civil law. The author analyses the main provisions of the reform of Polish inheritance law as regards the liability of heirs for the debts of the testator.

Jaroslaw Turlukowski

"Administrative justice in Poland"

(2016) 3(2) BRICS Law Journal, pp. 124–152

Keywords: administrative justice | administrative jurisdiction | administrative courts | principles of administrative procedure | Supreme Administrative Court of Poland | voivodeship (regional) administrative court | class actions | cassation appeal

This article begins with an analysis of the development of administrative justice in Poland over the last centuries. In particular, the author examines administrative jurisdiction before 1918, when Poland regained its independence, the period of the Duchy of Warsaw, the Kingdom of Poland, and the practice on Polish territory under Austrian and Prussian control. The author then moves to modern law by presenting the judicial system in Poland in general, especially the differences between the separate systems of general courts and administrative courts, and analyses the jurisdiction of voivodeship (regional) administrative courts, and the basic principles of judicial and administrative proceedings. The author concludes with observations concerning the progress of administrative jurisdiction in Poland, not only in the legal sense, but also in the cultural sense.

Jaroslaw Turlukowski

"Judicial Independence or a predictable judiciary: the wrong question or a difficult choice?"

(2016) 1(1) Kazan University Law Review, pp. 76–80

Keywords: judicial independence | predictable judiciary | Supreme Court supervision | Polish law | judicial systems | Poland | Russian Federation

The article discusses the fundamental role of the concept of judicial independence in countries of the continental legal family. The idea of separation of powers gives a possibility for judges to rule according to their own conscience. But then there appears the problem of stability and predictability of the judiciary. The main question is how to reconcile freedom in making decisions and sentencing by judges with the need for predictable interpretation of legislation. The author illustrates this issue through several examples taken from the judicial systems of Poland and the Russian Federation, each with a different approach to the problem. The issue is

systemic in nature, thus judicial service should be viewed as a system requiring coordination.

Paweł Waszkiewicz

"Regulating the access to and usage of CCTV recordings by law enforcement agencies"

in William R. Webster, Gemma Galdon et al. (eds.), *Living in Surveillance Societies: The State of Surveillance* (Charleston: CreateSpace Independent Publishing Platform, 2013), pp. 130–136
ISBN 978-1484049082

Keywords: CCTV | video surveillance | law enforcement | legal regulations

Global and national deployment of CCTV systems poses potential and real threats to privacy, creates doubts regarding its costs and efficiency. It is also capable of giving rise to legal concerns such as regulation of access to and usage of CCTV recordings by law enforcement agencies. The paper identifies the main areas which may need regulation and fleshes out a selection of solutions adopted in European systems. Comprehensive regulation is called for.

Paweł Waszkiewicz, Fredrika Björklund, Ola Svenonius

"Surveillance, Lustration and the Open Society: Poland and Eastern Europe"

in Kees Boersma, Rosamunde van Brakel, Chiara Fonio, Pieter Wagenaar (eds.), *Histories of State Surveillance in Europe and Beyond* (London: Routledge, 2014), pp. 130–136
(ISBN 978-1138665866)

Keywords: lustration | surveillance | open society | trust

Firstly, the lustration process in Poland is accounted for, and the paper calls upon the experiences of other Eastern European states. Secondly, surveillance practices in communist Poland are discussed. The third part pertains to surveillance in modern, post-communist Poland, and the prevalence of, for example, video surveillance among the Polish public. Lastly, the paper suggests that in order to fully grasp the features of mod-

ern liberal surveillance societies one must deepen one's understanding of the peculiarities of the history of a given place.

Paweł Waszkiewicz

"Homicide Investigation Research. Transatlantic Perspective"

in Linn Huff-Corzine, Hollianne Marshall, Lauren Wright (eds.), *Future Directions: Status of Homicide Research in the 21st Century. Proceedings of the 2015 Meeting of the Homicide Research Working Group* (Orlando: University of Central Florida, 2015), pp. 110–116
(ISBN 978-1484049082)

Keywords: homicide investigation | evidence-based | effectiveness

Two parallel ongoing projects on homicide investigations effectiveness conducted in Poland (since 2012) and US (since 2014) are to determine what kind of law enforcement actions are undertaken to search for the agent responsible, dispose of the case and gather sufficient evidence for the prosecution. A comparative American and European perspective is to facilitate identifying universally effective investigative actions. Various legal, cultural and geographical differences are taken into account.

Łukasz Żelechowski

"Infringement of a Community Trade Mark: Between EU-wide and non EU-wide scope of prohibitive injunctions"

(2013) 5 European Intellectual Property Review, pp. 287–296

Keyword: Community Trade Marks | European Union Trade Marks | extraterritoriality | infringement | injunctions

The article examines the issue of the territorial scope of prohibitive injunctions in cases of infringements of Community Trade Marks in the light of the judgment of the CJEU in Case C-235/09, *DHL Express France v. Chronopost SA*. In particular, the author analyses various factors which could potentially justify a non-EU-wide scope of injunctions taking into account the criteria adopted in the said judgment.

Łukasz Żelechowski, Michel Vivant

"Chapter 3 – The question of interpretation"

in Michel Vivant (ed.), *European Case Law on Infringements of Intellectual Property Rights* (Brussels: Bruylant, 2016), pp. 59–76
ISBN 978-2-8027-5153-3

Keywords: intellectual property | patent law | divergences of interpretation | doctrine of equivalents (or equivalence) | Bolar exception

The chapter examines the issue of divergence of interpretation of similar key concepts of patent in national case law using two examples. The first issue concerns the question of determining the scope of a patent with regard to the application of the doctrine of equivalents (or equivalence). The second issue concerns the varying court practice with regard to the application of the "Bolar exception" regarding the scope of parties that can rely on this exemption.

Łukasz Żelechowski

"Chapter 13 – Damages for infringement of intellectual property rights: current developments in EU case law"

in Michel Vivant (ed.), *European Case Law on Infringements of Intellectual Property Rights* (Brussels: Bruylant, 2016), pp. 211–226
ISBN 978-2-8027-5153-3

Keywords: intellectual property | liability for damages | compensation in the form of a lump sum | hypothetical licence fee | multiplication of hypothetical royalties

The chapter examines the issue of setting damages for infringement of intellectual property rights in the light of Directive 2008/48 and discusses the developments in the case law of the CJEU in that regard. It focuses on the issue of setting damages in the form of a lump sum and discusses possible developments prior to the passing of judgments by the CJEU in the cases of *Hansson* and *Stowarzyszenie Oławska Telewizja Kablowa*.

Łukasz Żelechowski, Roland Knaak

"Chapter 15 – Management of proceedings"

in Michel Vivant (ed.), *European Case Law on Infringements of Intellectual Property Rights* (Brussels: Bruylant, 2016), pp. 241–256
ISBN 978-2-8027-5153-3

Keywords: unitary intellectual property rights | European Union Trade Mark | community design | territorial scope of action | defendants with domicile in different Member States | burden of proof

The chapter examines specific issues connected with the planning of a proper and most efficient litigation strategy in the case of unitary EU intellectual property rights. These include: the territorial scope of the action for infringement of these unitary rights; the burden of proof; the options for selecting a competent court with Union-wide jurisdiction. These factors are of importance for planning litigation in the light of the case law of the CJEU, as well as of national courts of Member States.

Łukasz Żelechowski, Roland Knaak

"Chapter 16 – Territorial Scope of Relief"

in Michel Vivant (ed.), *European Case Law on Infringements of Intellectual Property Rights* (Brussels: Bruylant, 2016), pp. 257–274
ISBN 978-2-8027-5153-3

Keyword: unitary intellectual property rights | European Union Trade Mark | community design | territorial scope of injunctive relief | likelihood of confusion | European Union Trade Marks having a reputation | sanctions other than injunctive relief | applicable law

Unitary intellectual property rights under EU law are effective uniformly throughout the entire territory of the European Union and the enforcement of these unitary IP rights is assigned to national courts of the Member States. The subject of the chapter is to examine how the unitary character is realized with regard to the sanctions ordered in case of infringement of those rights by the EU trade mark courts or Community design courts.