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## PRAWO – *THE LAW*

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## PRAWO – THE LAW

Justyna BIEDA
Dorota WIŚNIEWSKA-JÓŹWIAK

### FORMAL REQUIREMENTS FOR THE MYSTIC WILL ON THE BASIS OF THE LEGISLATION OF THE KINGDOM OF POLAND IN VIEW OF THE RECORDS OF THE NOTARY OFFICES IN ZGIERZ IN 1826–1875

(Summary)

The secret (mystic) will, along with a self-written (holographic) will and a public will, was authorised by the Napoleonic Code. It contained some of the characteristics of a holographic will, since its details were kept secret, and a public will, since it had force of evidence of a legal instrument.

It consisted of two parts: a private document containing the declaration of will and a legal document that is legal overwriting added by the notary. Legally binding requirements were defined by the Napoleonic Code and no derogation was ever permitted. They were peremptory norms (lat. *ius cogens*).

The legal overwriting added by the notary was regulated not only by the Napoleonic Code, but also by the French law from 1803 (**Law Ventôse An XI of the 17 March 1803).**

Some of the requirements included in the French law from 1803 (**Law Ventôse An XI of the 17 March 1803)** were considered rules capable of being modified by contrary contractual engagements (lat. *ius dispositivum)*, which means that not following them had consequences other than validity problems. Some of the possible consequences were fees for the notary, an obligation to make up for the detriment of the improperly prepared document, the problems with validity of some fragments of the document or suspension of the notary.

In the State Archive in Łódź there are only nine secret wills gathered in the records of the notary offices in Zgierz in 1826–1875. Seven of them contain legal overwriting added by the notary and five decrees remain sealed. There are also two pieces of information claiming that two more decrees were of mystic form, but the documents themselves were not preserved.

Even though there are so few examples of notary's practice in the field of a mystic will, the article traces the legal requirements for the composition of such a document and the conclusions that can be drawn on the basis of them.

ELŻBIETA EJANKOWSKA

## DIFFERENCES IN PROPERTY RELATED STATUS OF *FILIAE FAMILIAS* IN THE LIGHT OF *IUS CIVILE* DURING THE LATE REPUBLIC AND THE PRINCIPATE

(Summary)

The article aims at presenting the specific differences in property related status of the family's daughter in the Roman agnatic family. To enable such considerations it was necessary to compare legal and property related position of *filiae familias* and *fiilus familias.* An analysis of the selected sources of reference, juridical and otherwise, allowed for certain findings. It turns out the status of the family's son according to *ius civile* during the late Republic and the Principate was subject to progressive change, which was manifested in the fact he received active legal capacities and limited capacity in law (*peculium castrense*). With regard to the legal and property related position of the family's daughter, the regulations of *ius civile* in the same period did not introduce any changes which would have increased her active legal capacities or her capacity in the law of property. Therefore, in accordance with *ius civile,* females who were subject to familial authority were deprived of private autonomy.

Ireneusz JAKUBOWSKI

## ARCHITECTS AND APOLOGISTS OF ROMAN LAW IN TADEUSZ CZACKI'S OPINION

(Summary)

The author presents Tadeusz Czacki's opinions regarding the architects of Roman law and those, who remained firmly under its influence, under its spell, and occupied themselves with reception of *ius romanum* by other legal systems.

In the first part of his work, the author relates Czacki's knowledge of Roman law, one of the most important characters of Polish life at the turn of 19th Century. The author points out that Czacki must have known the law of Romans very well, although this familiarity was rather formal instead of material. Czacki knew the sources of Roman law well, as well as its architects, although not without a few sad mistakes and imperfections. In the course of following sections, the author relates Czacki's opinion regarding the sources of *ius romanum*, so the Law of Twelve Tables, many other Roman acts, then the Theodosian Code and the entire codification of Justinian. Opinions of creators of Roman law are also presented: emperors August, Theodosian, Justinian, and afterwards the author presents Czacki's opinions about illustrious Roman jurists such as Papinian, Ulpian, Paulus and the great codificator Tribonian, the real creator of Justinian's work. Czacki doesn't spare many characters and presents negative opinions about them, of course with his great erudite skill.

In the last part, the author presents Czacki's knowledge of Polish law and its development in old Poland, beginning with the statutes of Casimir the Great and up to the efforts of codifying Polish law in the latter half of 18th Century. Because Czacki was not an enthusiast of Roman law's influence on Polish law theories, he criticised many Polish lawyers of the Renessaince, who had suggested admitting that Roman law had at least auxilary influence on the development

of Polish law, especially within town law. He quotes opinions regarding Ostrorog, Przyluski, Roisius and others. In the closing notes, the author remarks that even though Czacki is a follower the theory claiming Norman influence on Polish law, he starts to perceive, however small they were, influences Roman law had on Polish law.

Renata KAMIŃSKA

## IL PROFILO DI POTERI DEGLI EDILI DA IMPIEGATI URBANI

(Sommario)

I problemi legati alla vita di Roma e dei suoi abitanti furono l'occupazione principale soprattutto degli edili curuli e edili plebei. I loro compiti comprendevano principalmente tre aree di competenza quali, la *cura urbis*, *cura ludorum* e. *cura annonae*. Nell'ambito della *cura urbis* gli edili si occupavano la sicurezza e l'oridne di Roma. Sorvegliarono lo stato dei luoghi pubblici (*cura viarum*, *cura aedium*), lo stato sanitario della città e la moralità dei suoi abitanti. Inoltre, svolsero le funzioni di polizia urbana, il che fu legato fra l'altro al potere di perseguire e combattere gli atti illeciti. *Cura annonae* significò un obbligo di assicurare l'approvvigionamento della città. Gli edili curuli sorvegliarono anche il commercio pubblico, dove, tra l'altro, controllarono i prezzi e la qualità dei prodotti alimetari e prevennero l'usura. In relazione al commercio acquistarono il potere di giurisdizione civile, e inoltre il potere di emanare gli editti (*ius edicendi*). Infine, la *cura ludorum* significò il compito degli edili, curuli e plebei, di allestire e realizzare i giochi pubblici, cioè i *ludi*. All'inizio del principato il ruolo degli edili fu stato ridotto, comunque il medesimo ufficio perdurò fino al III secolo d. C..

Michał KRAKOWIAK

## ENFORCEMENT OF JUDGMENTS REGARDING RELATIONS WITH CHILD ON THE EXAMPLE OF SPANISH, ITALIAN AND GERMAN REGULATIONS

(Summary)

The purpose of this article is to discuss the legal model of enforcement of judgments regarding contacts with minor in Spanish, Italian and German Civil Procedure. Especially, the study of foreign laws in this cases is important, because by virtue of the Act on amending the Act – Code of Civil Procedure of 26 May 2011, was introduced to Polish Civil Procedure anew procedure for the mentioned matters. This type of procedure is one of the separate non-contentious procedure (Articles $598^{15}$–$598^{21}$ of the Code).

Firstly, in the article the presentation of Spanish law regulation is given. In the event of default judgments regarding contacts with child must be applied by analogy the regulations of enforcement of non-money orders (Articles 776, 699–711 of the Code of Civil Procedure of 7 January 2000, *Ley de Enjuiciamiento Civil*). Secondly, the article is focused on discussing Italian law regulation. Currently, the jurisdical doctrine emphasizes that in the mentioned matters, the new means of indirect enforcement of Article 614bis of the Code of Civil Procedure of

28 October 1940 (*Codice di Procedura Civile*) can be used. In accordance with Article 614bis of the Code, by the condemnation decision, except where this is manifestly unjust, upon motion by the party, the judge establishes the amount of money due by the obliged party, for any breach or next nonobservance, or for any delay in execution of the decision. Thirdly, the article contains an analysis of German law regulation. Under German law, the issue of the enforcement of judgments in custody cases is regulated by a separate Law on the Procedure in Family Matters and in Matters of Voluntary Jurisdiction of 17 December 2008 (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, FamFG*). Being forced execution of judgments in the mentioned matters are means for breach of order in the two form: pecuniary penalty (*Ordnungsgeld*) and subsidiary to it – penalty of arrest (*Ordnungshaft*).

Must be understood, that enforcement of judgment for dealing with child rights holders, it is an extremely difficult issue process. This is due to the personal nature of the obligations and rights identified in the judgment and strongly accented necessary participation of stakeholders in the proper execution of the judgment.

Joanna MUCHA

## THE EXTRA-JUDICIAL CIVIL PROCEEDINGS – THE ATTEMPT OF MODEL SETTLEMENT

(Summary)

Article 2 §3 of the Code of Civil Procedure provides for the civil cases not to be heard through court proceedings where specific provisions allocate them to the competence of other bodies. The activity of extra-judicial authorities based on hearing the cases is also allowed under constitutional law, provided that they are authorized to act by the statues and the legality of their decisions is controlled by the courts. Currently, extra-judicial proceedings include: arbitration, conciliation before the committee on labor, before the provincial committee adjudicating on medical events and extra-judicial mediation. The analysis of the rules governing these proceedings shows that despite the fact that they are carried out by different bodies and in different matters, they have certain common features, characteristic of civil procedure in general. These features include, among others, subjecting the proceedings to the principle of inter partes, equality and availability, the ability to enforce the judgment or settlement by means of coercive measures permitted under the law as well as the impartiality of the authority conducting the proceedings. It seems to be justified to state that extra-judicial civil proceedings constitute a group of proceedings whose purpose is to hear the case concerning civil relations, family and custody law as well as labor law by way of judgment or by agreement of the parties, pending before an impartial authority having or not having the competence to hear a case, acting, in principle, (apart from, as it seems, the proceedings before the provincial committee adjudicating on medical cases) under the control of the court.

Joanna PROKOP

## PROBLEMATIC ISSUES RELATED TO SETTLEMENT OF CLAIMS CONCERNING PROPERTY LEFT BEYOND THE BUG RIVER – AN ATTEMPT AT AN ANALYSIS OF APPLIED PRACTICE

(Summary)

The Act of 8 July, 2005 on Enforcement of the Right to Compensation for Leaving Real Estate Properties Beyond the Borders of the Republic of Poland brings to a close more than a half-century long process of settling accounts by the Polish State with the resident of the area east of the Bug River, as regarding their property left behind beyond the country's eastern border as a result of World War II. In the course of this process, which is a consequence of the so-called "republican agreements" concluded in 1944, a series of problems arose as a result of imperfections of legal regulations which, over decades, aimed at a definitive closure of the settlements concerning property left beyond the Bug River.

Among the issues raising doubts at the stage of practical application of the aforesaid regulations one may point out, by way of example, retroactive inclusion in the scope of the 2005 Act of proceedings instigated prior to its entry into force (that is pursuant to different acts of law) which were not completed until that moment; the legal nature of the term stipulated in the 2005 Act as the final deadline for filing claims for awarding the right to compensation; the nature of the term in which to name the person entitled to such compensation in cases where such right lies with more than one person; and finally – the subjective scope of the regulation and the consequences of the unconstitutional character of the requirement which calls for being a resident of the former territory of the Republic of Poland as on 1 September, 1939 as a prerequisite for entitlement to compensation.

The crucial and key question, which raises further doubts, seems to be the application of the 2005 Act to proceedings instigated but not ended prior to its entry into force. A uniform and consistent application of the new Act to previously instigated proceedings poses a challenge to bodies of public administration and courts of law, particularly in the light of conflicting requirements stipulated in other acts of law – and these are not only requirements of a strictly formal nature – concerning the claims. An analysis of adjudications passed by bodies of public administration and courts of law, however, leads to the conclusion that the doubts and divergences arising as a result of application of the new Act are usually decided in favour of the claimants.

Tomasz TULEJSKI

## THE UNHOLY „HOLY WARS" OF MODERNITY

(Summary)

The Author argues that the medieval notion of holy war did not pass away at the dawn of modernity. Rather, it has only taken a new form. Indeed, modern ideological wars constitute a secularized form of medieval crusades. The wars conducted by the French revolutionaries, the Bolsheviks as well as the contemporary American neoconservatives have all aimed at the

construction of different versions of the Kingdom of Heaven on Earth. Indeed, the Jacobins desired to make true an enlightened dream of a perfect social order of democratic republic. The Bolsheviks tried to put into practice abstracts rules of communist society. The Americans were determined to impose all over the world a democratic order based on human rights. In all these cases, the ideological purposes made legitimate a rejection of the traditional rules of just war. Although it lacks a transcendental component, the rhetorics of all these modern ideological wars is strikingly similar to that used in the Middle Ages.

Krystyna WÓJCIK-RADKOWSKA

**¿ES POSIBLE LA SOCIEDAD MULTICULTURAL?**
**POLÍTICA DE INMIGRACIÓN E INTEGRACIÓN SOCIAL DE LAS MINORÍAS**

(Resumen)

La inmigración, un fenómeno muy complejo, marca nuestra actualidad de modo significativo. La creciente diversidad social demanda una política específica del poder estatal y el desarrollo de determinados instrumentos legales que pueden asegurar el proceso de integración de los grupos minoritarios. La integración exige la gestión de las diferencias en distintos ámbitos: políticos, jurídicos, culturales, laborales, económicos etc. Para encontrar una respuesta adecuada a estas demandas se formulan distintos modelos teóricos de gestión de las diferencias culturales. La descripción de los modelos se constituye en función de los criterios que facilitan y promueven la intervención del inmigrante en la toma de decisiones sobre la gestión de las diferencias culturales y el diseño de las políticas de integración en la sociedad de acogida, en particular la participación política. El modelo que se reconoce como más adecuado para organizar la convivencia en el mismo territorio de distintos grupos étnicos es el multiculturalismo. El texto abarca, desde las perspectivas teórica y práctica, distintos aspectos de las políticas multiculturales y de los procesos de integración y plantea la viabilidad y las condiciones, tanto conceptuales como pragmáticas, de estos procesos.

## EKONOMIA – THE ECONOMY

Monika BOLEK

### SELECTED FINANCIAL RATIOS INFLUENCING THE MARKET VALUE OF COMPANIES LISTED ON WARSAW STOCK EXCHANGE IN POLAND

(Summary)

The value of a company on a market is connected to the theoretical or real value given by the share prices when a company is listed on the exchange. This price should be affected by the fundamental results the company is providing in reports to investors. In this paper it is shown that current ratio, cash conversion cycle and return on assets generally are not affecting the market price. There are only two exceptions where such relationships were found. Author concludes that Polish investors do not use fundamental analysis to make decisions or they interpret results incorrectly.

Joanna DOMINOWSKA

### ECONOMIC EFFECTIVNESS OF INDEPENDENT BOARDS OF TRUSTEES MEMBERS IN JOINT-STOCK COMPANIES

(Summary)

The goal of this article is to answer the question if dualistic system with the introduction of full independency and overbalance of such independent members in a board of trustees leads to the achievement of postulated results, i.e. to the growth of the shareholders value. The understanding of the independency and by which way it is achieved – in Europe as well as in the USA, is to be claryfied at the begining. Empirical and legal comparative methods have been used in that area. Empirical research done in USA and Poland will be introduced and the monistic and dualistic systems shall be compared as following. All this should demonstrate that despite unquestionable advantages of appointing independent members of the boards of trustees, the relation of outlays and effects with the existing absolute duty of appointing independent members of the board of trustees shows negative. Close effects are simply achieved also in countries with systems, where the demand of independency is not that essential. An attempt has been undertaken to find the reasons for the negative results of the empirical research on the independency of the members of the boards of trustees and to characterize possible reasons of the lack of correlation between the company's performance and the number of independent members in their boards of trustees. The authors hope that the scope of analysis drawn this way will contribute to the discussion, whether the independency of the controlling element in the boards of trustees of joint-stock companies guarantied by ius cogens should belong to the indisputable dogmas of the Polish company law.

Łukasz JABŁOŃSKI
Tomasz MISIAK

## REAL CONVERGENCE BETWEEN REGIONS OF THE EUROPEAN UNION BETWEEN 1995 AND 2008

(Summary)

The article presents the results of statistical calculations of  and  real convergence among the EU regions in 1995-2008 period. The calculation was conducted on the basis of GDP per capita data for 189 NUTS2 regions of the EU area, which were obtained from the OECD and Eurostat data bases. The main aim of the paper was to verify the research hypothesis of the convergence in level of product per inhabitant among the EU regions and among the selected groups of regions. The -convergence analysis used the indicators of spatial differences of the GDP per capita, such as: maximum, minimum, maximum and minimum ratio, coefficients of variations based on interquartile range ($V_Q$) and standard deviation ($V_S$). The calculated values of coefficients of variations provide evidence for spatial heterogeneity of the cross-regional GDP per capita and their changes in analyzed period – for -convergence or -divergence. The -convergence analysis was about the estimation of parameters of the Barro-type convergence equation and its modification of this equation by introduction of time variable. Moreover, to include the spatial heterogeneity of analyzed variables the equations extended by employing the fixed effects procedure. The parameters of convergence equations was calculated according to two methods, such as: OLS and GMM.

Aleksy KORNOWSKI

## DIFFERENTIATION OF ECONOMIC DEVELOPMENT FOR THE REGIONS OF THE RUSSIAN FEDERATION

(Summary)

The main aim of this article is an analysis of the spatial differentiation of economic development for the regions of the Russian Federation with five basic macroeconomic variables, namely: unemployment rates registered, investment per capita, GDP per capita, per capita assets and wages in the years 2000–2009. The work reflects on 79 regions of the Russian Federation, and the data used for the analysis comes from the Russian Statistical Office (Федеральная служба государственной статистики – Росстат; www.gks.ru). The basic method of the analysis is based on the taxonomic index Euclidean.

The spatial differentiation of the regional development of the Russian Federation shows the specificity and nature of Russian economy. The analysis leads to the conclusion that in terms of the variables analyzed the most developed regions are industrial and commercial, while the least developed regions have agricultural character.

Małgorzata MARKS-KRZYSZKOWSKA

**LOCAL PUBLIC MANAGEMENT – GENESIS, MAIN ACTORS AND THEIR ENGAGEMENT**

(Summary)

The paper presents a review of selected literature, domestic and international, reflecting the origins of public management in the municipal local governments. Identified three main types of management: bureaucracy – based on legitimate legal authority and qualified team of subordinate officials pursuing organization, managerial – which provides support to government officials and management techniques and business sector entities, to develop a set of standards and improve the efficiency and effectiveness of the results, and governance – open to broad co-operation entities representing all sectors, focused on innovation and development. Characterized as the main actors involved in these processes (international institutions, governments, and local governments, citizens and their organizations) and the involvement of local stakeholders in the creation of public policy. Literature shows that despite the existing and richer opportunities for participation and shared local politics is still an imbalance, asymmetry that puts local authorities in a privileged, dominant position.

KATARZYNA MROCZEK
TOMASZ TOKARSKI

**REGIONAL DIVERSITY OF CAPITAL-LABOUR RATIO, LABOUR PRODUCTIVITY AND TOTAL FACTOR PRODUCTIVITY IN POLAND IN 1995–2009**

(Summary)

The article aims at descriptive and statistical analyzing of spatial diversification of main macroeconomic categories, such as capital-labor ratio, labor productivity and total factor productivity across Polish regions/voivodships in the years 1995–2009. The capital-labor ratio is associated in the paper with fixed assets per employee, the labor productivity – with GDP per employee, whereas total factor productivity is computed on the basis of a regional production function.

The article contains and comments on, firstly: descriptive analyses of spatial diversification of the afore-mentioned characteristics, secondly: estimates of the Cobb-Douglas production function at regional level, thirdly: estimates of total factor productivity across the voivodships and finally: descriptive results of special diversity of the afore-mentioned characteristics.

Mariusz NYK

**REGIONAL CAPTIVATION OF UNEMPLOYMENT RATIO – DIAGNOSIS**

(Summary)

In the study a problem was taken for the seasonal character being found in an area of the unemployment rate in the context of her regional diversity. The article has diagnostic character, where the region constitutes the area of provinces. The hypothesis which through a statistical analysis will be verified, is following: the meaning social-economic differentiation of regions of Poland is finding its reflection not only in diversifying the unemployment rate, but also in seasonal variations examined. The author is aware that the problem is much broader and requires the deepened school of the differentiation above conditioning given. But on account of publishing restrictions and treating, for future researches, that study as pilot, the attention will be focussed in chosen areas.

Renata PISAREK

**AIRLINES BUSINESS STRATEGIES IN COMPETITIVE ENVIRONMENT**

(Summary)

The article examines airlines industry in the light of Porter's generic business strategies, such as a cost-leadership, differentiation and hybrid strategy. The paper presents analyse of airlines strategies effectiveness on example of: Ryanair – ultra cost-leadership strategy, British Airways – ifferentiation strategy and also Aer Lingus and Norwegian as hybrid strategies. Investigated is period of years 2001–2011 and data concerning number of passengers carried and net financial result.

Marek W. SZEWCZYK, Tomasz TOKARSKI

**REGIONAL DIVERSITY OF MAIN MACROECONOMICS VARIABLES IN POLAND**

(Summary)

The aim of the present study is a descriptive analysis of the spatial variation of basic macroeconomic variables in the Polish provinces. Variables whose variation is considered here are: GDP per capita, gross value of fixed capital formation per capita, investment per capita, wages and the unemployment rate. The work carried out in the paper, because of the availability of relevant statistics for the CSO ww.stat.gov.pl in August 2012, concerns the years 2002–2009 (GDP per capita and gross fixed assets per capita), 2002–2010 (investment per capita), or 2002–2011 (wages and unemployment rate). The paper summarizes the development of taxonomic analysis of complex economic indicators of macroeconomic variables enumerated above.