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Barbara Mikołajczyk



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EDITORIAL

Welcome to the sixth issue of the *Silesian Journal of Legal Studies* (SJLS). In this volume we continue legal discourse over geographical and legal borders. However, this time we have crossed the European borders! We present a text submitted by an author from Nigeria – Michael C. Ogwezy from Lead City University in Ibadan, and one by the Indian author Akshaya Kamalnaath – presently working at the Newcastle University in Australia. Her interdisciplinary case study relates to ethnic minority rights and the legal and sociological aspects of multicultural cohabitation. The text by M.C. Ogwezy concerns an international issue – the perspectives of African integration in framework of the ECOWAS.

International law issues are also discussed in the article by Ewa Kamarad from the Jagiellonian University, on relations between the European Union and the World Trade Organization. The group of articles dedicated to international law is completed by a text in German, written by Michał Filipek from the Polish Academy of Science, on the status of the Arctic region.

A mix of international and constitutional matters are taken up by Jerzy Menkes from the Warsaw School of Economics in his text on Polish citizenship from an international law perspective.

The other four authors are connected with the University of Silesia. The article by Marcin Janik tackles the difficult and vaguely problematic aspects of public goods. It is an interesting contribution to the worldwide debate on global administrative law. Marlena Jankowska provides an analysis of moral rights regulations in Asia, using the example of the right of attribution. Tadeusz Zieliński, writing in French, dedicates his article to the exemptions in the United Nations Convention on Contracts for the International Sale of Goods of 1980 affecting liability for a failure to perform party's obligations. Finally, Marek Zdebel and Malwina Bartela analyse issues of Polish financial law in his article on the legal character of internal audit.

As in previous issues, in this edition of SJLS we attach the report from the interesting conference which took place in Oxford and we continue to present a list of selected monographs published in 2013 by researchers from our Faculty of Law and Administration, as well as a list of conferences organised or co-organised by the Faculty and our foundation – *Facultas Iuridica*. It should be stressed that our legal discourse across borders is possible thank to the *Facultas Iuridica*, which covers the publishing costs of the Journal.

* * *

It is notable that most of the texts contained in the SJLS No 6 tackle various international issues or analyse domestic issues from an international or European perspective. Maybe this trend will be continued in subsequent issues of our Journal? Maybe it is proof of the progressive globalisation of particular branches of law. We will see! Therefore we invite you to read our Journal and we warmly invite researchers from Polish and foreign universities to contribute to it (find us at: www.sjls.us.edu.pl).

Barbara Mikołajczyk

REPORTS

IS INTELLECTUAL PROPERTY A LEX SPECIALIS? THE CONFERENCE REPORT FROM THE ATRIP 2013 CONGRESS, OXFORD

The 32nd Annual Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property took place on 23–26 June 2013 in Oxford, UK. The conference was attended by delegates from over 40 countries (and over 100 universities): mainly by doctors and professors teaching IP at their universities who wanted to discuss the degree to which IP is a *lex specialis*. Given the number of delegates willing to take the floor, the debates ran from dawn to dusk. The sessions took place within the distinctive walls of Pembroke College at Oxford University, which defines itself as “a college of poets and scientists, thinkers and players who want to make a difference to the world.” While it is not possible to talk at length on every speaker, I would like to highlight a few core points made at the conference.

The participants were greeted by Prof. Graeme Dinwoodie (Oxford University, the former President of ATRIP), Prof. Stefan Vogenauer (Oxford University) and Carlotta Graffigna (WIPO). Ms Graffigna opened the congress by making the point that, in order to develop we first need to develop “IP culture”.

The first session was chaired by Prof. Bill Cornish (Cambridge University) and was dedicated to general rules in IP Law. Prof. Robert Burrell (University of Western Australia) and dr. Emily Hudson (Oxford University) discussed the doctrine of abandonment, using the example of *Fisher vs. Brooker & Others* [2009, UKHL 41]. The case concerned Brooker and Onward, who had relied on the equitable doctrines of laches, estoppel and acquiescence to argue that the passage of time since the song was written precluded Fisher from now claiming a portion of the copyright. As stated in the judgment, “there is no statutory equivalent in intellectual property matters similar to the doctrine of adverse possession in relation to real property.”¹⁹ The speakers referred to the common law principle of *nemo dat quod non habet* as well as by the example of *Robot Arenas Ltd & Anor v Waterfield & Anor* [2010, EWHC 115] asked to what extent doctrines from chattel property must be changed to apply to intellectual property. Their finding was that abandonment in IP law might pave the way for compliance.

Dr. Dev Gangjee (LSE) referred to public domain and open access movement, asserting that people think that public domain is *res commune*, but in fact it is more like *res nullius*.

Prof. Ansgar Ohly (University of Munich) shed some light on the first sale doctrine and its territorial range, taking the example of *Kirtsaeng v. John Wiley & Sons, Inc.* of 29 Oct. 2012 [654 F. 3d 210]. He discussed the doctrine of exhaustion where the data

¹⁹ Cf. <http://www.leeandthompson.com/2009/09/24/fisher-%E2%80%93v-brooker-others-2009-ukhl-41/>, as of 27 Dec. 2013.

carrier is dematerialised, and touching on new ways of transferring data and using the cloud. He asked when law is exhausted and referred to the case *UsedSoft GmbH v. Oracle International Corp.* (CJEU, case C-128-11).

Prof. Alain Strowel (St. Louis University, Brussels) also discussed the doctrine of exhaustion and doctrine of first sale by example of software. With reference to Articles 4(1), 4(2) of Directive 2009/24, he depicted his concerns with a recent case, *Capitol Records, LLC v ReDigi Inc.* of 30 March 2013 [No. 12 Civ. 95 (RJS)].

Concerning the relation between intellectual property and contract law, Dr. Caroline Ncube (University of Cape Town) discussed the contractual regulation of copyright licensing contracts in South Africa, using the example of *Prism Holding Ltd. And Another v. Liversage and Others* [2004 (2) SA 478 (W)] and the Consumer Protection Act of 2008.

The next speaker, Prof. Pina D'Agostino (Osgoode Hall Law School), asserted that contract law trumps copyright law and made reference to some case law too (*Robertson v Thomson corp.*, 2006, SCC; *Leuthold v Canadian Broadcasting Corp.* 2012).

Prof. Charles McManis (Washington University, St. Louis) raised the topic of mass market licensing in e-Commerce and social networking 2.0 era. He cited the cases *ProCD v Zeidenberg* [86 F.3d 1447, 39 U.S.P.Q.2d 1161, 1 ILRD 634 (7th Cir. 1996)] and *Assessment Technologies of WI LLC v. WiredData, Inc.*, [350 F.3d 640 (7th Cir. 2003)] and referred to the ALI Principles of the Law of Software Contracts and Uniform computer Information Transactions Act (UCITA).

During the session chaired by Prof. Christian Le Stanc (University of Montpellier), the idea was proposed that countries need IP divisions in courts (e.g. at county level). As an example, reference was made to IP courts in Tokyo and Osaka in Japan, as well as 32 IP divisions in the high peoples' courts in China.

Dr. Orit Fischman Afori (The Haim Striks School of Law, Israel) noticed that a careful use of remedies can reshape the contours of copyright law, and that there is a tight linkage between rights and remedies. In her opinion, the courts should have more judicial discretion along with a new independent framework of remedies in copyright law. Dr. Anna Tischner (Jagiellonian University) asked whether there is an accumulation of IPR and remedies, and whether we need a *lex specialis* in this area.

Prof. Lionel Bently (Cambridge University) referred to "Report on the application of Directive 2004/48/EC on the enforcement of intellectual property rights" (COM(2010)779 final) of 22 Dec 2010 and Proposal for a Regulation of the European Parliament and of the Council concerning the customs enforcement of intellectual property rights (COM(2011)0285 final). More than that he discussed cases *Phillips v Mulcaire* [2012, UKSC 28] and Judgment of the Court (Third Chamber) of 15 November 2012 (Case C-180/11).

Dr. Lior Zemer (Radzyner School of Law) wondered whether we have come to the end of users' rights in Israel. He gave interesting examples of cases disputed in Israel: *Muzafi v Kabali*, *Ziso v Petach*, *Shapiro v Regen*, *Premier league v Israeli Sports Betting Board* [2010] and *Weinberg v Wieshof* 2012.

The last session, most awaited by your scholars, was devoted to Quality Control and Ranking of Specialised IP Journals The topic was discussed by Prof. Margo Bagley (University of Virginia School of Law), Prof. Martin Senftleben (Amsterdam Free University), Prof. Geetru Van Overwalle (KU Leuven) and dr. Giorgio Spedicato (University of Bologna) under the chair of Prof. Reto Hilty (Max Planck Institute for Intellectual Property). They considered that there are an incredibly low number of IP journals

that are granted many points. More than that, they assumed that one of the conditions of publication in international journals is the style of the language, making it impossible for many non-native authors to get published.

The next congress will be held in July 2014 in Montpellier.

Marlena Jankowska (University of Silesia)



**LIST OF SELECTED BOOKS PUBLISHED
BY THE RESEARCHERS OF THE FACULTY OF LAW
AND ADMINISTRATION OF THE UNIVERSITY
OF SILESIA IN 2013**

Jacek Barcik

Międzynarodowe prawo zdrowia publicznego
[*International Public Health Law*]
C.H. Beck, Warszawa 2013, pp. 370

Artur Biłgorajski

Granice wolności wypowiedzi. Studium konstytucyjne
[*A Constitutional Study of the Limitations of the Freedom of Speech*]
Wydawnictwo Sejmowe, Warszawa 2013, pp. 336

Artur Biłgorajski

Prawo konstytucyjne i ustroj organów ochrony prawnej dla praktyków. Objasnienia, wzory pism, kazusy i pytania
[*Constitutional law for practitioners and the organization of law enforcement authorities. Explanations, templates, questions and case studies*]
Wolters Kluwer Polska – LEX, Warszawa 2013, pp. 200

Rafał Blicharz

Institucje prawa rynku kapitalowego
[*Institutions of the capital market law*]
TNOiK, Toruń 2013, pp. 283

Rafał Blicharz (ed.)

Kontrola przedsiębiorcy
[*Control over the entrepreneur*]
Wydawnictwo CeDe Wu, Warszawa 2013, pp. 546

Michał Bożek

Wladza ustrojodawcza w konstytucjonalizmie niemieckim
[*Constituent power in German constitutionalism*]
Wydawnictwo Sejmowe, Warszawa 2013, pp. 230

Anna Hołda-Wydrzyńska

Tytuł utworu objęty prawem wyłącznym jako przedmiot ochrony prawnej w polskim prawie znaków towarowych

[The title of a creative work covered by the exclusive right as the subject of legal protection under Polish trademark law]

Oficyna Wydawcza Waclaw Walasek, Katowice 2013, pp. 256

Jadwiga Glumińska-Pawlic

Gospodarka finansowa miasta na prawach powiatu

[Financial management of district towns]

KAGA-DRUK, Katowice 2013, pp. 220

Michał Kania

Umowa o partnerstwie publiczno – prywatnym. Studium administracyjnoprawne

[Public – private partnership. An administrative law study]

Oficyna Wydawnicza Waclaw Walasek, Katowice 2013, pp. 397

Dorota Łobos-Kotowska

Umowa przyznania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich

[The Agreement of grantaid from the European Agricultural Fund for Rural Development]

LexisNexis, Warszawa 2013, pp. 359

Krystian Markiewicz

Zasady orzekania w postępowaniu nieprocesowym

[Principles of adjudicating in non-litigation]

C.H. Beck, Warszawa 2013, pp. 474

Grzegorz Matusik

Własność urządzeń przesyłowych a prawa do gruntu

[Ownership of transmission industrial facilities and right to land]

Lexis Nexsis, Warszawa 2013, pp. 500

Marian Mikołajczyk

Proces kryminalny w miastach Małopolski XVI–XVIII wieku

[Criminal proceedings in Malopolska towns in the XVI–XVIII centuries]

Wydawnictwo Uniwersytetu Śląskiego, Katowice 2013, pp. 620

Mirosław Pawelczyk

Publicznoprawne obowiązki przedsiębiorstw energetycznych jako instrument zapewnienia bezpieczeństwa energetycznego w Polsce

[Public law duties of energy companies as an instrument of ensuring energy security in Poland]

Wydawnictwo Adam Marszałek, Toruń 2013, pp. 560

Piotr Pinior

Nadzór wspólników w spółce z ograniczoną odpowiedzialnością

[Supervision of shareholders in private limited companies]

C.H. Beck, Warszawa 2013, pp. 485

Wojciech Popiołek (ed.)

System Prawa Handlowego. Międzynarodowe Prawo Handlowe
[*The System of Commercial Law. International Commercial Law*]
C.H. Beck, Warszawa 2013, pp. 1362

Ewa Przeszło

Kontrola udzielania zamówień publicznych
[*Control of public procurement*]
Polskie Wydawnictwo Prawnicze Iuris, Poznań 2013, pp. 467

Ewa Rott-Pietrzyk

Interpretacja umów w prawie modelowym i wspólnym europejskim prawie sprzedaży (CESL)
[*Interpretation of contracts in model law and Common European Sales Law (CESL)*]
C.H. Beck, Warszawa 2013, pp. 297

Rafał Stasikowski

Transport kolejowy. Analiza administracyjnoprawna
[*Rail transport. An administrative law analysis*]
Difin, Warszawa 2013, pp. 340

Katarzyna Sychta

Kodeks postępowania karnego ze schematami
[*The penal procedure code with diagrams, edition 5, edition 6*]
LexisNexis, Warszawa 2013, pp. 697

Ewa Śladkowska

Wydanie decyzji administracyjnej bez podstawy prawnej lub z rażącym naruszeniem prawa w ogólnym postępowaniu administracyjnym
[*Administrative decisions issued without legal basis or with flagrant violation of law in general administrative proceedings*]
Wolters Kluwer, Warszawa 2013, pp. 260

Zygmunt Tobor

W poszukiwaniu intencji prawodawcy
[*In search of legislative intention*]
Wolters Kluwer, Warszawa 2013, pp. 315

Wojciech Wyrzykowski

Umowa o generalną realizację inwestycji (EPC/”pod klucz”)
[*The Contract for general completion of an investment (EPC/Turnkey)*]
C.H. Beck, Warszawa 2013, pp. 210

Jarosław Zagrodnik

Model interakcji postępowania przygotowawczego oraz postępowania głównego w procesie karnym
[*The interaction model between preliminary proceedings and main court proceedings in criminal procedure*]
C.H. Beck, Warszawa 2013, pp. 576

Dorota Zienkiewicz

Dowody kryminalistyczne w postępowaniu cywilnym

[Forensic evidence in civil proceedings]

B.S. Training, Pińczów 2013, pp. 377

Grzegorz Żmij

Firma w prawie prywatnym międzynarodowym

[Company (Business Names) in Private International Law]

C.H. Beck, Warszawa 2013, pp. 168



**LIST OF CONFERENCES
ORGANISED AT THE FACULTY OF LAW
AND ADMINISTRATION OF THE UNIVERSITY
OF SILESIA IN 2013**

JANUARY

Programme on European Private Law for Postgraduates (round III)

MARCH

Partycypacja społeczna w samorządzie terytorialnym
Social Participation in Local Governments

APRIL

Dobra osobiste a portale społecznościowe
Personal Rights and Community Portals/ Social Media

Nowelizacje prawa karnego i ich konsekwencje – teoria i praktyka
Amendment of Penal Law and its Consequences

MAY

Przepisy wymuszające swoje stosowanie w prawie prywatnym międzynarodowym
Overriding Mandatory Rules in Private International Law

JUNE

Kryminalistyka w walce z przestępczością. Nowoczesne rozwiązania taktyczno-techniczne w kryminalistyce jako determinanty skuteczności organów ścigania w walce z przestępczością
Forensic Science Against Crime – Modern Technical and Tactical Solutions as Determinants of the Effectiveness of Law Enforcements Agencies

SEPTEMBER

Prawne zasady ochrony środowiska w związku z gospodarowaniem jego geologicznymi zasobami

Legal principles of environmental protection in relation to the management of its geological resources

II Sympozjum Historyków Państwa i Prawa Polskiego pt. Ewolucja prawa
II Symposium of Historians of the Polish State and Law – “The Evolution of Law”

Postępowanie rozpoznawcze w nowym kodeksie postępowania cywilnego – Katowice – Kocierz

Civil Procedure Convention. Main Court Proceedings in the New Civil Procedure Code

25 lat fundamentów wolności działalności gospodarczej. Tendencje rozwojowe
25 Years of Economic Liberty. Development tendencies

OCTOBER

Europejskie i międzynarodowe prawo karne – osiągnięcia, kierunki rozwoju, wyzwania
European and International Criminal Law – Achievements, Directions and Challenges

NOVEMBER

Kontrola przedsiębiorcy
Control over the Entrepreneur.

DECEMBER

Akty poświadczenia dziedziczenia na tle harmonizacji prawa prywatnego
Certificates of Inheritance in the Context of Harmonization of Private Law

Ochrona własności intelektualnej w przedsiębiorstwie
Protection of Intellectual Property in Enterprises

Dni Edukacji na Rzecz Zwierząt
Education Days on Animals' Rights

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