

ABSTRACTS

Elwira Macierzyńska-Franaszczyk

“New” Limited Liability for Succession Debts under Polish Law

The article discusses Polish rules on liability for succession debts in the light of the recently adopted reform of 18 October 2015. The main idea of the reform was to convert the principle of unlimited liability for succession debts into the principle of limited liability for succession debts. The Polish legislature introduced also a new instrument – “listing of inventory”, a private document filled by e.g. an heir. Although the reform did not modify the system of liability for succession debts in a complex way, the result of it is a more balanced regulation of heir’s liability. The reform is an important step towards the principle of “economic neutrality of risks of the succession”, which main assumption is a highly balanced protection of creditors and debtors of succession.

Wojciech Bańczyk

Der Vertrag zugunsten Dritter auf den Todesfall im polnischen Recht – Die Zulassung der Lösung aus § 331 BGB kraft Vertragsfreiheit

The Contract in Favour of the Third Party for the Moment of Death – The Availability of the Solution from § 331 BGB by means of Freedom of Contract

The article analyses the premises of the contract in favour of the third party important for its formation as a tool for post-mortal succession. Even though Polish law lacks a regulation similar to § 331 BGB and allows for no freedom of legal acts mortis causa, it is claimed that such a contract is admissible and used for the payment from the banking account or the life-insurance. Then it is analysed, whether the particular legal relations within this contract (among promisor, promisee and the third party) could be inter vivos, mortis causa or inter vivos for the moment of death. It leads to a conclusion of its dubious character within inheritance law, or outside it, which affects the scope of law applicable to such a contract.

Joanna Anna Wolska

Gilt auch das deutsche Recht auf der anderen Seite der Oder? Is German legislation, too, applicable on the other side of the Oder?

The article begins with the discussion of the differences in the structures of the current Polish and German Civil Codes. It also provides an overview of the historical background of the current Polish Civil Code and its predecessor, the Polish Obligation Code of 1933. It then addresses the issue of the regulation of the mistake from the legal policy standpoint, given the fact that the regulations in Poland and Germany from a comparative perspective are only similar, but certainly not identical.

Lukasz Golba

Personal Data “Trading” Under Polish Contract Law

This article elaborates on the changing perception of personal data in the light of the traditional contractual relationship. The opinion that personal data may be treated as remuneration is frequently expressed. However, in the Polish literature this problem is not subject of wide discussion and so far no papers related to personal data as the object of an obligation have been published so far. Exchanging goods and services for personal data has become a fact; however, the legal qualification of providing personal data in the context of obligation has raised adequate reservations. Several examples for this will be provided in this article.

Another related issue which is discussed is the question whether there are provisions of Polish or European law that directly apply to personal data as an element of contractual relationship. Regulations will be analysed paying special attention to implications of considering personal data in the context of obligation.

The article further discusses the following questions: Is personal data among the designata of the term “payment”? What consumer behaviour should be treated as a counter-performance (if at all delivery of personal data could be considered as counter-performance)? Can behaviour consisting of delivery of personal data be matched to classical mechanisms of the functioning of contract law institutions in Poland?

Bianca C. Kannenberg

Die in AGBs von Bewertungsportalen vereinbarte Vertragsstrafe als Instrument der Kompensation nach rechtswidrigen Bewertungen – Die rechtlichen Möglichkeiten in Deutschland und Polen

The Penalty Contracted for in General Terms and Conditions of Internet Review Portals as an Instrument of Damages Resulting from Illegal Reviews – Legal Possibilities in Germany and Poland

The article discusses the possibility of a contractual penalty as an instrument for damages for illegal reviews, which can be established in the terms and conditions of an Internet review portal. Initially, the article outlines the German legal system as well as the latest German and European court rulings on the existing, and non-existing, opportunities for deleting an illegal review, and the pertaining potential damages. In summary it can be said that the likelihood of obtaining damages is limited, because on the one hand, users are writing their reviews anonymously, and in many cases, the process of getting access to personal details is virtually “hopeless”; on the other hand, a sustained damage is complicated to prove by the affected party.

Furthermore, the article presents, where possible, the arrangement of a contractual penalty in the terms and conditions of an Internet review portal. Such an arrangement in fact turns out to be possible, but only under strict conditions.

In the following, the Polish legal system and latest court ruling are presented and compared to the foregoing. In conclusion, the Polish and the German legal systems do have a lot in common, but the Polish court ruling is not as progressive compared to the German ruling, with respect to the possibility of deleting an illegal review, for example. Moreover, a contractual penalty in Poland is more complicated to introduce into the legal system.