Introduction to Polish Civil Law

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The concept of Polish Civil Law

- Short Legal History of Polish Civil Law (1933 Polish Code of Obligations, 1964 Polish Civil Code, the future of Polish civil law)
- The Pandectistic Structure of the Polish Civil Code
- The high level of abstraction of the used concepts – contract vs. juridical act
- Concept of Juridical Act
- Relation between Polish Civil Code and other particular statutes
- Polish Civil Law and European Contract Law
Juridical Acts

- The validity of the juridical acts (art. 58 CC).

**Article 58.** § 1. An act in law which is inconsistent with statutory law or is designed to circumvent statutory law shall be null and void unless the appropriate provision envisages a different effect, in particular that those provisions of the act in law which are null and void are replaced by the appropriate provisions of statutory law.

§ 2. An act in law which is inconsistent with the principles of community life shall be null and void.

§ 3. If only a part of an act in law is affected by nullity, the act shall remain valid as to its remaining parts unless it follows from the circumstances that without the provisions affected by nullity the act would not have been performed.

- Mandatory law and the „principles of the social cohabitation” as the boundaries for the content of the juridical acts
- Effects of the lack of conformity of the juridical acts with the mandatory law and the principles of the social cohabitation
Juridical acts

- The declaration of will (intent) (art. 60, 65 CC)
- The „delivery rule” of declaration of will (intent) (art. 61 CC)
- Theory of reliance and the interpretation from the perspective of the addressee – protection of reliance v. private autonomy?
- The court decisions replacing the declaration of wills
- Validity of juridical acts, including defects of consent (e.g., mistake, fraud, simulation)
- Validity of contract (freedom of contract)
- The content of juridical act (art. 56 CC)
Marketing and pre-contractual duties

I. The question about general obligation of the parties to disclose information about the contract

- art. 546 CC – seller’s duty to disclosure information about goods;
- art. 354 CC - general rule about performance of obligation as a legal base for the general duty to disclosure information
- art. 72 par. 2 CC – regulation of culpa in contrahendo (a person who is engaged in negotiations has a duty to negotiate in accordance with good faith and fair dealing)
- absence of general duty to disclosure information in Polish civil law
Pre-contractual information to be given by a business dealing with consumer

• Duty to provide information when concluding distance or off-premises contract (information about price and additional charges and costs, about the identity and address of the trader, about contract terms, about rights of withdrawal)

• Burden of proof

• Mandatory nature of provisions

• Remedies and other consequences of breach of information duties: damages for loss caused to the party which has a right to information by failure of the information duty- lability ex contractu or ex delicto? ; the question about the mistake or fraud;
Pre-contractual information to be given by a business dealing with consumer

- DCFR- additional remedy: if the business has breached the information obligation, the business has such obligations under the contract as the other party has reasonably expected as a consequence of the absence or incorrectness of the information.

- Information as a base of common intent of the parties – a new model of contract.
Non – individual negotiated terms

- Non – negotiated terms, standard terms (art. 384 CC):
  - there is no legal definition of not negotiated term (individual and standard),
  - doctrinal definition of not individually negotiated term: a term supplied by one party is not individually negotiated if the other party has not been able to influence its content, in particular because it has been drafted in advance, whether or not as a standard term;
  - doctrinal definition of standard term: a term which has been formulated in advance for several transactions involving different parties and which has not been individually negotiated by the parties.

- Inclusion/incorporation of standard terms to contractual relationship as a first step of a control of standard terms (art. 384 CC):
  - non-consumer contracts (delivery rule excluding contracts in which standard terms are usually used),
  - consumer contracts (delivery rule excluding „minor” contracts)
Not individually negotiated terms

- Interpretation of not individually negotiated terms:
  - contra proferentem rule: where there is doubt about the meaning of a term not individually negotiated, an interpretation of a term against the party who supplied is to be preferred,
  - preference for negotiated terms: terms which have been individually negotiated take preference over those which have not.

- Duty of transparency in terms not individually negotiated:
  - a person who supplies terms which have not been individually negotiated has a duty to ensure that they are drafted and communicated in plain, intelligible language.
Not individually negotiated terms

- **Unfairness test:**
  - general rule (art. 385 (1) CC): in a contract between a business and a consumer a term which has not been individually negotiated is unfair if it is supplied by the business and if it significantly disadvantages the consumer, contrary to good faith and fair dealing;
  - exclusions from the unfairness test: terms concerning the main subject matter of the contract if they are drafted in a plain and intelligible language.

- Indicative list ("grey" list) of unfair terms (art. 385 (3) CC): a term in a contract between business and consumer is "presumed" to be unfair if it is on the grey list.

- Effects of unfair term: a term which is unfair is not binding on the party who did not supply it (the contract is binding without the unfair term if it can be maintain without this term).
Contracts

- Formation of contract by:
  - Offer and acceptance
  - Oral and written auction
  - Negotiations
Requirements for the conclusion of a contract

A contract is concluded if the parties: intended to enter into a binding legal relationship and reach a sufficient agreement (general rule with some exclusions).

**Determination of the intention:** the intention is to be determined from the party’s statements or conduct (as they were reasonably understood by the other party); reliance theory of the declaration of will

**Sufficient agreement if:** the terms of the contract have been sufficiently defined by the parties; the terms of the contract (or the rights and obligations) of the parties can be otherwise sufficiently determined (*essentialia negotii*, *accidentalia negotii*, *naturalia negotii*).
Offer

- The concept of the offer
- Offer and the *invitatio ad offerendum* (invitation to make an offer) – price lists and advertisements. Offer to the public
- Effects of the offer
- Question of the revocation of the offer
- Electronic offer and the confirmation of the receipt
The concept of the offer

Article 66. § 1. A declaration made to another party of the intention to conclude a contract shall be deemed an offer if it determines the essential provisions of the contract.

§ 2. If no time limit was specified by an offeror in an offer for a reply, the offer made in the presence of the other party or by means of direct communication over distance shall cease to be binding if it is not accepted immediately; if made in a different way, it shall cease to be binding upon the lapse of the time limit in which the maker of the offer could, in the normal course of business, receive a reply sent without unjustified delay.
The offer made in an electronic form

Article 66(1). § 1. An offer made electronically shall be binding for the maker of the offer if the other party confirms its receipt without delay.

§ 2. Before concluding a contract an entrepreneur making an offer electronically shall be obligated to inform the other party unambiguously and clearly of:

1) technical acts covered by the procedure of concluding a contract;
2) legal effects of the receipt of the offer by the other party;
3) rules and methods of fixing, protecting and making accessible the contents of the contract by an entrepreneur to the other party;
4) technical methods and means for detecting and correcting errors in the introduced data that must be made by him available to the other party;
5) languages in which the contract may be concluded;
6) codes of ethics applied by him and their availability in electronic form.

§ 3. Provision of paragraph 2 shall apply accordingly if the entrepreneur invites the other party to start negotiations, make offers or conclude contracts in another way.

§ 4. The provisions of paragraphs 1 to 3 shall not apply to contracts concluded through electronic mail or similar means of individual communication over distance. Nor shall they apply to the relations between entrepreneurs if the parties so agreed.
Offer and the *invitatio ad offerendum* (invitation to make an offer) – price lists and advertisements. Offer to the public

**Article 71.** Announcements, advertisements, price lists and other information addressed to the public or to particular persons shall be considered, in case of doubt, not an offer but an invitation to conclude a contract.

**Article 543.** Displaying a thing to the public at the place of sale with the indication of the price shall be deemed to be an offer of sale.
The acceptance of the offer

- **Article 67.** If the declaration of acceptance of an offer arrived with a delay but it follows from its contents or the circumstances that it was sent in due time, the contract shall be effective unless the maker of the offer immediately notifies the other party that because of a delay of the reply he considers the contract as not concluded.

- **Article 68(2).** If an entrepreneur has received from a person with whom he is in permanent business relations an offer to conclude a contract within the scope of his activity, the lack of immediate reply shall be considered the acceptance of the offer.

- **Article 69.** If, in accordance with the custom established within given relations or in accordance with the contents of the offer, it is not required that the maker of the offer receive from the other party the declaration of its acceptance, in particular if the maker of the offer demands immediate performance of the contract, the contract shall be effective if the other party in due time proceeds to carry it out; otherwise the offer shall cease to be binding.

- **Article 70.** § 1. In case of doubt, a contract shall be considered concluded at the moment when the maker of the offer receives the declaration of its acceptance, and if it is not required that the maker of the offer receive the declaration of its acceptance, at the moment when the other party proceeds to perform the contract.

- § 2. In case of doubt, a contract shall be considered concluded at the place where the maker of the offer received the declaration of its acceptance, and if it is not required that the maker of the offer receive the declaration of its acceptance or the offer is made electronically, at the place of residence or in the seat of the maker of the offer at the moment of conclusion of the contract.
The acceptance of the offer made with stipulation of changing

- **Article 68.** The acceptance of an offer made with a stipulation of change or a completion of its contents shall be considered as a new offer.
- **Article 68(1).** § 1. In relations between entrepreneurs a reply to the offer made with a stipulation of changing or supplementing the offer in a way that does not change its contents substantially shall be deemed its acceptance. In this case the parties shall be bound by the contract with the contents determined in the offer, taking into account the stipulations made in the reply thereto.
- § 2. The provision of the preceding paragraph shall not apply if the contents of an offer state that it may be accepted only without stipulations, or if the offeror has immediately objected to the inclusion of the stipulations in the contract, or if the other party in reply to the offer made its acceptance conditional upon the offeror's consent to include the stipulations in the contract and did not receive such consent immediately.
The revocation of the offer

- **General rule:** an offer may be revoked if the revocation was delivered to the other party before the offer;

- **Article 66(2).** § 1. In relations between entrepreneurs an offer may be revoked before the contract is concluded if the declaration of revocation was submitted to the other party before his sending a declaration of acceptance of the offer.

- § 2. However, the offer may not be revoked if such results from its contents or a time limit has been fixed therein.
Negotiations

- A person is free to negotiate and is not liable for failure to reach an agreement.

- A person who is engaged in negotiations has a duty to negotiate in accordance with good faith and fair dealing and not to break off negotiations contrary to good faith and fair dealing.

- It is contrary to good faith and fair dealing, in particular, for a person to enter into or continue negotiations with no real intention of reaching an agreement with the other party.

- A person who is in breach of the duty is liable for any loss caused to the other party by the breach. (liability for *culpa in contrahendo* – *ex contractu* or *ex delicto*)
Content and Performance of obligation

- Content of obligation, duty to perform

**Article 353.** § 1. An obligation shall consist in that the creditor may demand a performance from the debtor, and the debtor is obliged to provide the performance.

§ 2. The performance may consist in act or omission.
Performance of obligation

• General duties

Duty to perform in accordance with „good faith”? Duty to co-operate

**Article 354.** § 1. The debtor must discharge his obligation in accordance with its contents and in a manner complying with its socioeconomic purpose and the principles of community life, and if there are established customs in that respect, also in a manner complying with those customs.

§ 2. The creditor shall be obliged to co-operate in the discharge of the obligation in the same way.

Duty to perform in accordance with due diligence

• **Article 355.** § 1. The debtor shall be obliged to act with diligence generally required in the relationships of a given kind (due diligence).

§ 2. The due diligence of the debtor within the scope of his economic activity shall be assessed with the consideration of the professional nature of that activity.
Performance of obligation

- **Performance by a third party**

**Article 356.** § 1. The creditor may demand a personal performance on the part of the debtor only if that follows from the content of the judiciary act, from statutory law, or from the nature of the performance.

§ 2. If a pecuniary receivable debt is due, the creditor cannot refuse to accept the performance from a third party even if the latter acts without the debtor's knowledge.
Modalities of Performance

- **Place of performance**

**Article 454.** § 1. If the place where the performance is to be made is not specified and does not follow from the nature of the obligation, the latter shall be met at the place where the debtor had its place of residence or seat at the time of the obligation's inception. However, a performance in money shall be made at the place of the creditor's place of residence or seat at the time of the satisfaction of the performance; if the creditor changed his place of residence or seat after the inception of the obligation, he shall bear the surplus cost of the remittance caused by that change.

§ 2. If the obligation is connected with the enterprise of the debtor or that of the creditor, the seat of the enterprise shall be decisive for the place where the performance is to be made.
Modalities of Performance

- **Time of performance**
- **Article 455.** If the time limit for the performance is not specified and does not follow from the nature of the obligation, the performance shall be made immediately upon demand.
- **Article 456.** If the parties stipulated in the contract that the performance shall be in parts over certain period of time but did not specify the size of those partial performances or the periods of time when each of them was to be made, the creditor may, by a declaration made to the debtor at a proper time, specify both the size of those partial performances and the periods of time for the making of each of them, but he shall take into consideration the possibilities of the debtor and the mode of performance.
- **Article 457.** The time limit for the performance indicated in an act in law shall be deemed, in case of doubt, as reserved to the benefit of the debtor.
Rebus sic stantibus rule

- **Variation or termination of contract by court on a change of circumstances**
- **General rule:** an obligation must be performed even if performance has become more onerous.
- **Exclusion (art. 357 (1)):**
  - If, following an extraordinary change of circumstances, the performance would be faced with excessive difficulties or threaten one of the parties with substantial loss, which the parties did not foresee when concluding the contract, the court may, after considering the interests of the parties, define the mode of performing the obligations and the degree of the performance, and even decide upon termination of the contract, in accordance with the principles of community life. When terminating the contract the court may, as far as necessary, decide upon a settlement of accounts being guided by the principles specified in the preceding sentence.
Performance of monetary obligations; “small” rebus sic stantibus rule

- **Article 358(1).** § 1. If the object of the obligation from its beginning is a sum of money, the performance shall be made by the payment of the nominal sum unless separate provisions state otherwise.

§ 2. The parties may stipulate in the contract that the amount of a performance in money shall be fixed by a measure of value other than money.

§ 3. In the case of an essential change of the purchasing power of money after the arising of the obligation, the court may, after considering the interests of the parties and in accordance with the principles of community life, change the amount or the mode of making a performance in money even if these were fixed in the decision or the contract.

§ 4. The party running an enterprise cannot demand a change of the amount or the mode of effecting a performance in money if the latter is connected with the running of an enterprise.
Non-performance of obligation

Definition of non-performance: general rule of non-performance versus specific rules of non-performance of obligation

General rule:

**Article 471.** The debtor shall be obliged to redress the damage resulting from the non-performance or improper performance of the obligation unless non-performance or improper performance were due to circumstances for which the debtor is not liable.

Specific rules:

**Impossibility of performance: Article 475.** § 1. If the performance becomes impossible as a result of circumstances for which the debtor is not liable, the obligation shall expire.

- § 2. If the thing which is the object of the performance is sold, forfeited, or damaged, the debtor shall be obliged to release all that which he obtained in exchange for that thing or as the redress of the damage.

**Delay of performance non-monetary obligation: Article 476.** The debtor is in default if he does not perform the performance within the specified time limit, or, if the time limit is not specified, if he does not perform the performance immediately upon the demand of the creditor. This shall not apply to the case where the delay in the performance is a result of circumstances for which the debtor is not liable.

**Delay of performance monetary obligation: Article 481.** § 1. If the debtor delays in making a performance in money the creditor may demand interest for the time of the delay even if he suffered no damage whatever and if the delay was a result of circumstances for which the debtor is not liable.

- § 2. If the rate of the interest for the delay was not fixed in advance, the statutory interest shall be due. However, if the receivable debt bears an interest rate higher than the statutory rate the creditor may demand the interest to be paid for the delay at that higher rate.

- § 3. In the case of the debtor's delay, the creditor may also demand the redress of the damage on the general principles.
Non-performance of obligation

- **Definition of non – performance: general rule of non-performance *versus* specific rules of non-performance of obligation**

Other specific rules:

**Sales contract: Article 556 CC.** § 1. The seller shall be liable to the buyer if the thing sold has defects which reduce its value or utility with respect to the purpose stipulated in the contract or resulting from the circumstances or the destination of the thing if the thing does not have the properties about which he assured the buyer or if the thing was released to the buyer in an incomplete condition (warranty for physical defects).

§ 2. The seller shall be liable to the buyer if the thing sold is the property of a third party or if it is encumbered with a right of a third party; in the case of selling the rights, the seller shall also be liable for the existence of such rights (warranty for legal defects).

**Consumer sales contract: lack of conformity: art. 4 consumer sales act:**

The goods do not conform with the contract unless they:

- are of the quantity, quality and description required by the contract,
- are contained or packed in the manner required by the contract,
- are supplied along with any accessories, instalation instructions or other instructions required by the contract.
Non-performance of obligation

Remedies:

- specific performance (enforcement of performance as a content of obligation or remedy?),

- right to withhold of performance of reciprocal obligation:
  * Article 488. § 1. Performances which are the subject matter of obligations resulting from mutual contracts (mutual performances) shall be made simultaneously unless it follows from the contract, statutory law or a decision of the court or other competent authority that one of the parties is obliged to an earlier performance.
  
  § 2. If the mutual performances are to be made simultaneously, each party may withhold the performance until the other party offers the mutual performance.

Article 490. § 1. If one of the parties is obliged to make the mutual performance earlier, and the making of the performance by the other party is doubtful in view of his financial standing the party obliged to make the earlier performance may withhold it until the other party offers the mutual performance or gives a security.

§ 2. The party which at the time of the conclusion of the contract was aware of the bad financial standing of the other party is not vested with the above right.
Non – performance of obligation

- Termination of contract:

**Article 491.** § 1. If one of the parties is delayed in making the performance resulting from a mutual contract, the other party may set an appropriate additional time limit for the performance with the warning that in the case of an ineffective lapse of the time set he shall be entitled to renounce the contract. It may also, either without setting an additional time limit or after its ineffective lapse, demand the making of the performance and the redress of the damage resulting from the delay.

§ 2. If the performances of both parties are divisible and one of the parties is in delay only with respect to a part of the performance, the other party’s right to renounce the contract shall be limited, according to its choice, either to that part or to the whole rest of the performance not made. That party may also renounce the contract as a whole if partial performance would have no significance for it in view of the nature of the obligation or in view of its intended purpose of the contract, known to the party in delay.

**Article 492.** If the right to renounce a mutual contract was reserved for the case of non-performance of the obligation within strictly defined time, the authorized party may, in the case of the delay of the other party, renounce the contract without setting an additional time limit. The same applies to the case where the making of the performance by one of the parties after the date originally set would have no significance for the other party in view of the nature of the obligation or in view of its intended purpose of the contract, known to the party in delay.

**Article 493.** § 1. If one of the mutual performances became impossible as a result of the circumstances for which the party obliged is responsible, the other party may, according to its choice, either demand the redress of the damage resulting from the non-performance of the obligation or renounce the contract.

§ 2. In the case of a partial impossibility to make a performance by one party, the other party may renounce the contract if partial performance would have no significance for it in view of the nature of the obligation or in view of its intended purpose of the contract, known to the party whose performance become partly impossible.
Non – performance of obligation - remedies

Termination of contract (specific rules) and reduction of price:

Sales contract: Article 560. § 1. If the thing sold has defects, the buyer may renounce the contract or demand a reduction of the price. However, the buyer cannot renounce the contract if the seller immediately exchanges the defective thing for a thing free from defects or immediately removes the defects. This limitation shall not apply where the thing has already been exchanged by the seller or repaired, unless the defects are not substantial.

§ 2. If the buyer renounces the contract due to a defect in the thing sold, the parties shall mutually return the performances received in accordance with the provisions on renouncing mutual contracts.

§ 3. If the buyer demands a reduction of the price due to a defect in the thing sold, the reduction shall be in the proportion in which the value of the thing free from defects is to its value calculated taking into account the existing defects.

§ 4. If a seller has exchanged a thing, he must also cover the costs borne by the buyer in this connection.
Non – performance of obligation

Debtor’s right to cure of obligation:
- nachfrist (art. 491 CC) versus right to cure sensu stricto (art. 566 CC)
Remedies for non-performance of obligation

- **Damages:**
  
  **Article 471.** The debtor shall be obliged to redress the damage resulting from the non-performance or improper performance of the obligation unless non-performance or improper performance were due to circumstances for which the debtor is not liable.

  **Article 494 (in connection with art. 471).** The party which renounces a mutual contract shall be obliged to return to the other party all that which it received from the latter by virtue of the contract; it may demand not only the return of that which it performed but also the redress of the damage resulting from the non-performance of the obligation.

  **Article 361.** § 1. The person obliged to pay an indemnity shall be liable only for the normal effects of the act or omission from which the damage resulted.

  § 2. Within the limits specified above, in the absence of a different provision of statutory law or provision in the contract, the redress of the damage shall cover the losses incurred by the injured person as well as the benefits which that person could have obtained had he not suffered the damage.
Remedies for non-performance of obligation

• **Stipulated payment for non-performance:** contract term regulating contractual damages (art. 483 – 484 CC):
  - the creditor is entitled to specified in contract term sum for non-performance of obligation irrespective of the actual loss;
  - The specified sum may be reduced by the court to a reasonable amount if the obligation has been performed in a significant part or if the stipulated sum is grossly excessive.

• **The question of the liability of debtor for non-pecuniary loss:** S. Laitner case (ECJ), art. 5 of package travel act