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BOOK REVIEW

OBLIGATIONS IN POLISH LAW. By W.J. Wagner. Leiden, Sijthoff, 1974. Pp. ix, 287 (Vol. 2 of POLISH CIVIL LAW, D. Lasok, ed.; and Vol. 18 (2) of LAW IN EASTERN EUROPE).

*Jurij Fedynskyj**

The Documentation Office for East European Law at the University of Leyden published in the past two decades a number of valuable monographs dealing with Soviet law, and the latest volumes of the series "Law in Eastern Europe" are devoted to the law of Poland. POLISH CIVIL LAW appeared under the editorship of Professor D. Lasok not long after the publication of POLISH FAMILY LAW by the same author.¹ Initially planned as a one-volume work it expanded into four volumes and appeared in 1973-1975.²

Only the second volume of this set is the subject of the present review. It does not correspond to book three of the Polish Civil Code Articles 353-951 covering the entire law of obligations but is limited to the general part of the law of contracts, groundless enrichment³ and the law of torts. From the special part of the law of obligations, only the formation of contract is discussed (pages 65-69); it is the sale of agricultural products by the producer to authorized units of the socialized economy at prices established by the State.⁴

The Polish Civil Code of 1964 begins with a sweeping statement that it regulates civil legal relations between units of the socialized economy, between natural persons, and between the units of the socialized economy

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1. Published in 1968 as volume 16 of the series.

2. Volume 1 includes: CODE OF CIVIL LAW by D. LASOK; LAW OF PERSONS by L. FRENDL; PROPERTY LAW by A. RUDZINSKI; AGRARIAN LAW by L. KOZIEBRODZKI; LAW OF SUCCESSION by D. LASOK. Volume 2: OBLIGATIONS IN POLISH LAW by W.J. WAGNER. Volume 3: CIVIL LAW ASPECTS OF COMMERCE AND TRADE by L. KOS-RABCEWICZ-ZUBKOWSKI; HOUSING LAW AND INSURANCE LAW by D. LASOK. Volume 4 is a translation of the POLISH CIVIL CODE OF 1964 by Z. NEGBI.

3. Translated as "unjustified enrichment" by Negbi in the fourth volume of the set. Since the translation of the Code appeared after the publication of the treatise, there are some semantical discrepancies in various parts of the set.

4. POLISH CIVIL CODE arts. 613-626.

and natural persons.⁵ Since close to 100% of Poland's industrial output is produced by the units of the socialized economy, the uninitiated might expect in the new code a highly original set of rules coping with the practical implementation of state economic plans. Surprisingly, the Polish legislators did not deviate substantially from the traditional law of contracts prevailing in Western legal systems. One wonders how tenacious are the old principles of the law of contracts which, even after total removal of some of their essential elements (especially the freedom to conclude the contract), are still used to help fulfill the economic plans of the socialized economy. As is well-known, the socialized economy cannot work by administrative rules alone.

In the private sector of life, the usual way of entering into contractual relations is the acceptance of an offer. As to the time of effectiveness of the declaration of intention, the theory of reception is recognized in Polish law. The principle of specific performance is favored over damages. A general clause "principles of community life" seems to play a role equivalent to equity.⁶ The author discusses this principle thoroughly (pages 13-38) giving many illuminating examples from the judicial decisions prior to 1970. A cursory perusal by this reviewer of later volumes of decisions of the Polish Supreme Court indicates that this Article 5 of the Civil Code has also been applied quite frequently by Polish courts in recent years.

The exegesis of the Polish law of torts is done with exceptional attention and refinement. It looks as if the author liked it best. After explaining the principle of fault prevailing in Polish tort law, the author discusses extensively cases of strict liability extended also to possessors of automobiles.⁷ Reluctance to award lump sum compensations instead of periodical payments is stressed. There are no damages for grief over wrongful death. In the case of a willful infringement of a personal right,⁸ the injured person may claim from the perpetrator the donation of an appropriate sum to the Polish Red Cross.⁹

A noteworthy provision is Civil Code Article 440; this permits limiting the scope of the duty to make good an injury in relations between natural persons by reason of the financial situations of the tortfeasor and his victim.

5. *Id.* art. 1(1).

6. POLISH CIVIL CODE art. 5: "No one shall use any right in a manner contrary to its socio-economic purpose, or to the principles of community life of the Polish People's Republic."

7. *Id.* art. 436.

8. *E.g.*, defamation.

9. POLISH CIVIL CODE art. 448.

There are several court decisions applying this principle where the negligent driver of a state-owned vehicle was sued by way of subrogation by the state insurance company which had made payment to the victim of the accident. Unlike the Soviet Union, Poland permits civil liability insurance.

Professor Wagner presents the subject in two dimensions: historical and comparative. In the historical aspect, he pays close attention to the immediate basis from which the present law of obligations developed: the Polish Code of Obligations of 1933,¹⁰ and the Commercial Code of 1934.¹¹ But he proceeds even deeper. Since the Polish Code of Obligations of 1933 took over many fundamental legal concepts from the German and French Civil Codes, as well as from the Swiss Code of Obligations—legislations in which the author feels comfortably at home—the book contains many comparative references to these codes. In the comparative aspect, one finds even more references to the corresponding rules of the Soviet and Czechoslovak Civil Codes, and occasionally to the civil codes of other socialist states. Being an American law teacher, the author was able to present the Polish law of obligations in a legal language understandable to readers accustomed to common law. One must admit without qualifications that he created a remarkable piece of work. He did not limit himself to the repetition of code provisions but discussed the legal institutions in depth, combining comparative and dogmatic methods; he uses profusely all available Polish legal literature, including hundreds of cases decided by Polish courts up to 1970, in order to show how the law was applied in practice. Summaries of cases are not relegated to footnotes as in many civil law treatises, but are fully discussed in the text.

For the benefit of common law readers and those interested in comparative law, the author gives an objective, scholarly treatment of an important subject in a legal system which is not much known outside of Eastern Europe.

I found in the book little that would invite criticism. In order to round out and balance this review I will mention just one such minor issue.

The author states on page 2 that the Polish Code of Obligations of 1933 “was widely recognized as a progressive and excellent piece of work.” As authority for this statement he cites (in footnote 6) the translation of this code into French, and only his own two articles of 1962 and 1970 respectively. The statement would be much stronger if some other opinions

10. Kodeks zobowiazan of Oct. 27, 1933.

11. Kodeks handlowy of June 27, 1934. There is no separate Polish Commercial Code at this time.

published shortly after the promulgation of the Code were also cited: *e.g.*, S. Dnistrianskyj, *Das neue Obligationenrecht*,¹² and *Das tschechoslowakische Entwurf und der polnische Kodex des Obligationenrechts*;¹³ U. Rukser, *Das neue polnische Obligationenrecht*.¹⁴

12. 1 ZEITSCHRIFT FÜR OSTEUROPÄISCHES RECHT 123 (1936).

13. Reviewed by Franz Gschnitzer in JURISTISCHE BLÄTTER 1936 at 21.

14. 8 ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 342-75 (1934).