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Abstract of Ph.D. Dissertation

titled *Natural (incomplete) obligations in the Polish civil law*

The subject of the dissertation are natural (incomplete) obligations. Although there are no provisions of Polish law directly referring to this category, the construction of natural obligations is widely accepted in the legal literature and case law. Despite the above, this topic has not been the subject of a more comprehensive publication.

The analysis presented in the dissertation, conducted with application of the formal-dogmatic, comparative and historical method, not only has demonstrated that incomplete obligations – as in other legal systems – are widely recognized in the legal literature and case law, but also that it is possible to identify their common constitutive properties. These include: existence of an obligation relationship within the meaning of Art. 353 § 1 of the Civil Code, as well as non-actionability (non-enforceability) understood as incapability of an obligation to be effectively enforced by means of court or out-of-court compulsion (e.g. set-off, the right of retention). Such understanding makes it also possible to resolve a number of specific problems, proving that incomplete obligations constitute a sufficiently uniform and distinguishable category of obligations, whose properties make it possible to draw practical conclusions.

Natural obligations in Polish law need to be viewed in a broader perspective of the universal character of this institution. The Roman law sources of *obligatio naturalis* result in this construction being manifested in many legal systems, some of which have direct or indirect bearing on the shape of the Polish conception.

The dissertation identifies the following cases of natural obligations (claims): i) obligations resulting from the so-called non-qualified games or wagers; ii) time-barred claims against consumers and other time-barred claims with respect to which a time-bar has been effectively asserted; iii) claims which have been waived in the course of a procedure, if a substantive law claim corresponded to the procedural claim; iv) surplus of a receivable reduced by an arrangement in the course of a restructuring procedure; v) claims to which Art. 618 § 3 of the Civil Procedure Code applies; vi) a claim for conclusion of a final agreement resulting from a weaker-effect preliminary agreement. Other cases qualified in the legal literature as incomplete obligations have also been verified.

The parties are incapable of effectively making claims resulting from natural obligations actionable (with the exception of the time bar). On the other hand, assessment of admissibility of contractual creation of natural obligations depends on the moment when their actionability is excluded – generally it would be admissible to create originally natural obligations, but it would be invalid to subsequently deprive a claim of its actionability.

The dissertation presents an assessment of the so-called effectiveness of natural obligations, i.e. their capability of being subjected to institutions of general character, such as a settlement agreement, renewal, claim for compensation, accessory rights, etc. In those cases where legal regulations combine certain effects or legal instances with the notions of "obligation", "debt", "receivable", it needs to be assumed that these instances generally apply also to natural obligations. Assessment in this respect makes it however necessary to take into account the essence of an incomplete obligation in the form of its non-enforceability and its *ratio legis*. This may lead to inability to apply a given instance or – in accordance with the conception of secondary non-actionability – this may justify the thesis concerning the natural character of claims arising subsequently.

The dissertation discusses also procedural issues. Non-actionability should be accepted by a court *ex officio*, within the limits of the evidence collected, and an action covering a natural claim should be rejected. Disputes concerning natural claims may be pursued in arbitration.