

An Outline of Polish Commercial Law

Law: The Basic Concepts

Series Editors

JERZY ZAJADŁO

DAVID MALCOLM

An Outline of Polish Commercial Law

edited by

JOANNA KRUCZALAK-JANKOWSKA

Joanna Kruczalak-Jankowska | Kaja Zaleska-Korziuk

Monika Maśnicka | Robert Obrzud | Maciej Żejda



GDAŃSK – WARSZAWA 2019

Legal status: 1 January 2018

Series Editors

Professor Jerzy Zajadło

Professor David Malcolm

Reviewer

Professor Krzysztof Wesołowski

Translation

David Malcolm

Publishing Editor

Maria Kosznik

Cover and title pages design

Karolina Zarychta

Cover photo

Michał Mrozek (in the public domain)

Typesetting and layout

sunny.gda.pl

The book was financed from the statutory funds of
the Faculty of Law and Administration of the University of Gdańsk

© Copyright by University of Gdańsk

Gdańsk University Press

ISBN 978-83-7865-820-7

Wydawnictwo Uniwersytetu Gdańskiego / Gdańsk University Press

ul. Armii Krajowej 119/121, 81-824 Sopot

tel./fax 58 523 11 37, tel. 725 991 206

e-mail: wydawnictwo@ug.edu.pl

www.wyd.ug.edu.pl

Online bookstore: www.kiw.ug.edu.pl

Table of contents

From the Editor (<i>Joanna Kruczalak-Jankowska</i>)	9
Part I	
Introductory Issues (<i>Joanna Kruczalak-Jankowska</i>)	11
Chapter 1. Concepts of business law and commercial law	13
Chapter 2. Principles of business	16
Chapter 3. Participants in business transactions	18
Part II	
Forms of Running Business Activities (<i>Maciej Zejda</i>)	21
Chapter 1. Introduction	23
1.1. Outline	23
1.2. Preliminary remarks	23
Chapter 2. Sole proprietorship	28
Chapter 3. Partnerships	29
3.1. Civil law partnerships	30
3.2. Commercial Partnerships	33
3.3. Registered partnership	36
3.4. Professional partnership	38
3.5. Limited Partnership	39
3.6. Limited joint-stock partnership	42
Chapter 4. Companies	43
4.1. Preliminary remarks	43
4.2. Incorporation	48
4.3. Company bodies	51
4.4. Liability of company body members	59
4.5. End of companies	61
Chapter 5. Raising finance	64
5.1. Sole proprietorships	64
5.2. Partnerships	64
5.3. Companies	65
Chapter 6. Strategic legal drafting	68

Part III	
Insolvency and Restructuring Proceedings in Poland (<i>Monika Maśnicka</i>)	83
Chapter 1. Preliminary remarks	85
Chapter 2. Court and insolvency practitioners	88
Chapter 3. Insolvency proceedings	90
3.1. Requirements to start insolvency proceedings	90
3.2. Rules on ranking claims	91
Chapter 4. Restructuring proceedings	95
4.1. Requirements to start restructuring proceedings	95
4.2. Requirements for the approval of an arrangement and the role of the restructuring plan	97
4.3. Available out-of-court proceedings for business restructuring	101
Part IV	
Trading Contracts in Domestic and International Trade – Selected Problems (<i>Robert Obrzud</i>)	103
Chapter 1. General considerations	105
1.1. The definition of a commercial contract	105
1.2. The division of commercial contracts	106
1.3. The characteristics of commercial contracts	108
1.4. Sources of law for commercial contracts in international trade	109
1.4.1. Sources of statutory and non-statutory law	109
1.4.2. Soft law	111
Chapter 2. Commercial contracts in the Polish legal order	113
2.1. Preliminary activities to the conclusion of a commercial contract	113
2.1.1. Letter of intent	113
2.1.2. Preliminary agreement	114
2.1.3. Contractual models	115
2.1.4. Means of concluding commercial contracts	118
2.1.4.1. The offer and its acceptance	118
2.1.4.2. Negotiations	120
2.1.4.3. Auction and tender	121
Chapter 3. Contracts concluded with consumers	124
3.1. Consumer rights	124
3.2. Off-premises and distance contracts	127

3.3. The consumer's right of withdrawal	132
3.4. Contracts referring to distance financial services	137
Chapter 4. Forms of commercial contracts	142
4.1. Basic forms and specific legal transactions	142
4.2. The consequences of the failure to observe the form of a legal transaction	144
Chapter 5. Securing the performance of a commercial contract	146
5.1. General observations	146
5.2. Guarantee	146
5.3. Blank promissory note	149
5.4. Bank guarantee	151
Chapter 6. Selected commercial contracts	154
6.1. Commercial contracts in domestic trade. Sales contract	154
6.2. An agency agreement	156
6.3. A forwarding contract	157
6.4. Contract of carriage	158
6.5. Storage contract	161
6.6. Leasing contract	162
6.7. International trade contracts	164
6.7.1. International sale of goods	164
6.7.2. International carriage of goods by road	168
Part V	
International Dispute Resolution (<i>Kaja Zaleska-Korziuk</i>)	173
Chapter 1. Introduction	175
1.1. Outline	175
1.2. Preliminary remarks	175
Chapter 2. International litigation	177
2.1. Jurisdiction: Brussels I bis	181
2.2. Applicable law	185
2.2.1. Rome I Regulation	185
2.2.2. Rome II Regulation	188
2.3. The problem of forum shopping	190
Chapter 3. International commercial arbitration	193
3.1. The concept of arbitration	193
3.2. Legal framework of international commercial arbitration	195
3.2.1. Arbitration rules	197
3.2.2. The UNCITRAL model law on international arbitration	198

3.2.3. Lex arbitri	199
3.2.4. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	200
3.3. Types of arbitration: ad hoc arbitration, institutional arbitration	201
3.4. Arbitration agreement	204
3.4.1. Submission agreement and arbitration clause	204
3.4.2. Separability of an arbitration agreement	205
3.4.3. Competence-competence doctrine	206
3.4.4. Validity of arbitration agreements	207
3.4.4.1. Formal validity	207
3.4.4.2. Arbitrability	210
3.4.5. Strategic contract drafting – arbitration agreement	211
3.4.5.1. Model arbitration agreements	212
3.4.5.2. Identification of legal relationship	213
3.4.5.3. Adoption of arbitration as a method of dispute resolution	214
3.4.5.4. Selection of institutional or ad hoc arbitration	214
3.4.5.6. Provision on finality and bindingness	216
3.4.6. Pathological arbitration clauses	216
Chapter 4. Alternative dispute resolution	232
4.1. Negotiation	233
4.2. Mediation	233
4.2.1. Concept of mediation	233
4.2.2. Development of mediation in Poland. Note	236
4.3. Other types of ADR	240
4.3.1. Conciliation	240
4.3.2. Mini-trial	241
4.3.3. Early neutral evaluation	241
4.3.4. Dispute review board	241
4.3.5. Baseball arbitration	242
4.3.6. Med-Arb and Arb-Med	242
4.4. Multi-tiered dispute resolution clauses	243
4.5. ADR – pros and cons. Assignment topic	244
Selected Further Reading	245