

Table of Contents

Preface.....v
List of Abbreviationsxxi
Introduction..... xxiii

1. Constitutional Law (*Lech Garlick*) 1
 I. Introduction 1
 II. The Principles of the Political System4
 A. Sovereignty of the Nation.....5
 B. Independence and Sovereignty of the State6
 C. Democratic State Ruled by Law7
 D. Separation of Powers9
 III. Individual Rights and Freedoms11
 A. Dignity of the Person.....11
 B. Freedom and Equality.....12
 IV. The Legislative Power17
 A. Sejm and Senate17
 B. The Electoral System.....18
 C. The Term of Office and Composition of the
 Two Chambers.....19
 D. The Legislative Process20
 E. The Control Function.....22
 V. The Executive Power: The President of the Republic
 A. The President’s Status24
 B. Electing the President24
 C. Presidential Prerogatives and Powers25
 VI. The Executive Power: The Council of Ministers, Central
 Government Administration and Local Self-Government.....27
 A. The Status of the Council of Ministers27
 B. The Council’s Formation and Dissolution.....28
 C. The Council’s Accountability.....30
 VII. Concluding Observations31
 Selected Bibliography35

**2. Civil Law (Law of Contracts, Property and Obligations)
 (*Adam Brzozowski*)37**
 I. Introduction37
 A. The Codification of Polish Civil Law.....37
 B. Principal Features of the 1964 Civil Code and the

Post-1988 Amendments.....	38
II. General Provisions of the 1964 Code, Including the Law on Contracts	40
A. The Subject Matter and Sources of Civil Law	40
B. Spatial and Temporal Application of Civil Law	42
C. Subjects of Civil Law	43
D. Legal Personality of Natural Persons.....	43
1. Legal Capacity.....	43
2. Capacity to Undertake Legal Actions.....	43
3. The Individualization of Natural Persons	44
4. Protection of Personal Interests	44
E. Legal Personality of Juridical Persons.....	45
1. The Definition of the Juridical Person.....	45
2. The Legal Capacity of Juridical Persons	45
3. Capacity to Undertake Legal Actions.....	45
4. Special Status of the State Treasury	46
F. Agency.....	46
G. Legal Events	47
1. Declarations of Intent and Its Forms	47
2. Contract Formation, Interpretation and Termination.....	48
3. Imperfect Legal Actions	50
H. Statutory Time Limits.....	51
I. The Object of Civil Law Relations	53
III. Law of Property	54
A. Functions, Sources and the Nature of Property	54
B. Substance and Scope of Ownership Rights	55
C. Acquisition and Loss of Ownership.....	56
1. Types of Acquisition	56
2. Transfer of Ownership.....	56
3. Acquisition of Ownership from an Unauthorized Person	57
4. Adverse Possession and the Acquisition Resulting from the Owner's Expression of the Lack of Interest in the Property	57
5. Other Instances of Acquisition	58
6. Relinquishment of Ownership Rights.....	59
D. Co-Ownership.....	59
E. Separate Ownership of Residential and Non-Residential Quarters	59
F. Protection of Ownership	60
G. Perpetual Usufruct.....	60
H. Limited Property Rights	61
1. Usufruct.....	62

2. Servitudes	62
3. Limited Property Rights of Members of a Cooperative	63
I. Mortgage.....	64
J. Pledge	65
K. Possession.....	66
L. Land and Mortgage Registers	67
M. Exercise of Rights.....	68
IV. Law of Obligations	70
A. The Basic Characteristics and Sources of the Law of Obligations	70
B. The Notion of an Obligation.....	70
C. The Debt and the Debtor's Liability	70
D. The Creation of an Obligation	71
E. Performance as the Object of an Obligation	71
F. Subjects of Obligations.....	72
G. The Freedom of Contract Principle	73
H. Consumer Contracts	73
I. Baseless Enrichment.....	74
J. Ex Delicto (Tort) Liability.....	75
K. Discharge of Obligations	76
L. Non-Performance or Improper Performance of Obligations	77
M. Expiration of Obligations	79
N. Protection of Creditors in Case of the Debtor's Insolvency	80
O. Special Part.....	80
V. Concluding Observations.....	81
Selected Bibliography	82
 3. Family and Succession Law (<i>Elzbieta Skowronska-Bocian</i>)	85
Part One: Family Law	85
I. The Evolution of Polish Family Law	85
II. Basic Concepts and Principles of Family Law	87
III. Marriage.....	88
A. Entering into Marriage.....	88
B. Marriage Impediments.....	89
C. Legal Consequences of Marriage	90
D. Termination of Marriage.....	90
E. Annulment of Marriage	91
F. Legal Separation	92
G. Divorce Grounds.....	93
1. Positive Divorce Grounds.....	94
2. Negative Divorce Grounds (Art. 56 §§ 2-3).....	94
H. Legal Consequences of Divorce	95
I. Property Relations Between Spouses	96

1. Marital Property Systems	96
2. Statutory Community Property System	97
3. Liability for Debts	97
4. Management of Community Property	98
J. Spousal Support During Marriage	98
K. Termination or Partition of Community Property	99
IV. The Parent-Child Relationship	100
A. Recognizing a Child's Biological Identity	100
B. Parental Authority	101
V. Adoption	102
A. Types of Adoption	102
B. Termination of Adoption	103
C. Adoption by Foreigners	104
VI. Support Duty	104
A. Support Between Direct-Line Relatives	104
B. Affinity-Based Support Duty	105
C. The Order of Classes of Obligor	106
Part Two: The Law of Succession	106
I. General Principles	106
II. Testamentary Succession	108
A. Testamentary Freedom	108
B. Forms of Testament	108
C. Substance of a Testament	109
D. Validity of Testaments	110
III. Statutory Succession (Arts. 931-938 of the CC)	110
IV. The Legal Status of Heirs	111
A. Acquisition of Estate	111
B. Heir's Unworthiness and Disinheritance	111
C. Liability of Heirs for Debts of the Estate	112
D. A Forced Share	113
E. Non-Severable Nature of the Estate and Its Distribution	113
V. Concluding Remarks	113
Selected Bibliography	115
 4. Civil Procedure (<i>Tadeusz Erecinski</i>)	117
I. Introduction	117
A. The Code of Civil Procedure and Its Historical Background ..	117
B. Modes of Proceedings in Civil Cases	119
C. Examination Proceedings	119
D. Enforcement Proceedings	121
II. Fundamental Principles of Civil Procedure	122
A. The Principle of Substantive Truth	122
B. The Principle of the Parties' Autonomy	123

C.	The Principle of Adversarial Proceedings	124
D.	The Principle of the Equality of Parties	124
E.	The Principles of Directness and Orally Conducted Proceedings.....	125
F.	The Principle of Free Evaluation of Evidence	126
III.	The Composition and Jurisdiction of Courts	126
A.	General Rules	126
B.	The Jurisdictional Issues.....	127
C.	The Court Clerk	128
IV.	Parties to Proceedings, Legal Representatives and Costs of Proceedings.....	128
A.	Parties to Proceedings.....	128
B.	Representatives.....	128
C.	Costs of Proceedings	129
V.	Types of Civil Suits	130
A.	Introductory Observations	130
B.	Performance Suits.....	131
C.	Determination Suits	131
D.	Formation Suits	132
E.	Claims for the Benefit of Third Parties.....	132
F.	Counter Suits	133
VI.	Law on Evidence in Civil Cases	133
A.	The Object of Proof and Evidentiary Measures.....	133
B.	Documents.....	133
C.	Witnesses.....	134
D.	Expert Opinions.....	135
E.	Visual Inspections.....	135
F.	Hearing of the Parties	136
G.	Modern Sources of Evidence.....	136
H.	Evidentiary Proceedings	136
VII.	Appellate Measures	137
A.	Ordinary Appeal	137
B.	Interlocutory Appeal.....	138
C.	Cassation Complaint.....	138
D.	Reopening of Proceedings	140
E.	Complaint for Declaring a Final Judgment Contrary to Law ..	140
VIII.	Enforcement of Civil Judgments.....	141
A.	Enforcement Bodies	141
B.	Enforcement Title	141
C.	Status of Enforcement Officers	142
D.	Initiation of Enforcement Proceedings and Methods.....	142
E.	Division of the Collected Amount.....	145
F.	Protection against Enforcement.....	145

G. Costs of Enforcement	145
IX. Jurisdiction of Polish Courts and Enforcement of Foreign Judgments in Poland	146
A. International Civil Procedure	146
B. Jurisdiction of Polish Courts	147
C. Recognition and Effectiveness of Foreign Judgments	149
D. Declaration of Enforceability of a Foreign Judgment	150
E. Recognition and Enforcement	150
X. Concluding Remarks	151
Selected Bibliography	152
 5. Administrative Law (<i>Jacek Jagielski</i>)	153
I. Introduction	153
A. General Characteristic of Polish Administrative Law	153
B. Historical Background	154
II. Main Issues and Developmental Trends of Contemporary Administrative Law	155
A. Post-Transition Developments	155
B. Current Problems and Trends	156
1. Administrative Law in the Market Economy	156
2. Administrative Law and the System of Sources of Law	157
3. Administrative Law and Protection of Rights and Freedoms	157
4. Administrative law and Its Role in the Transformation Period	158
5. Increased Efficiency and Effectiveness	159
6. Growing Role of Professional Self-Governing Bodies	159
7. Finalization of Public Administration Reforms	159
8. Privatization of Public Tasks	160
9. Growing Significance of Procedural Matters	160
10. Reform of Substantive Administrative Law	161
C. Areas in Need of Reform	162
1. Civil Rights and Freedoms	162
2. Economic Activity	163
3. Free Choice of Profession	164
4. Social Rights	164
5. Environmental Protection	164
6. Status of Public Administration Staff	165
7. Management of Public Property	165
8. 'Europeanization' of Administrative Law	166
9. Codification	166
III. The System of Public Administration	166
A. Central Administration	167

B.	The President of the Republic of Poland	167
C.	The Council of Ministers	168
D.	The Prime Minister (Premier).....	169
E.	Ministers	170
F.	Central Organs (Central Offices).....	170
G.	Local Administration	171
H.	Governmental Administration	173
I.	Territorial Self-Government	175
IV.	Functioning of Public Administration	178
A.	The Principle of Legality	178
B.	Legal Forms of Administrative Activities	178
C.	Administrative Procedures.....	180
D.	Oversight of Administration	181
V.	Concluding Remarks	184
	Selected Bibliography	187
6.	Economic Law (<i>Cezary Banasinski, Remigiusz Kaszubski, Mirosław Wyrzykowski</i>)	189
I.	Introduction	189
A.	Economic Law within the Polish Legal System	189
B.	Historical Background.....	190
II.	Constitutional Foundations of the Economy.....	192
A.	Introduction	192
B.	The Socially Responsible Economy and the Family Farm	192
C.	The Principles of Economic Freedom and Equality	193
D.	Protection of Private Ownership.....	195
III.	Commencing and Conducting Economic Activity	197
A.	Harmonizing Polish Economic Law with EU Standards	197
B.	Basic Principles of Economic Law under the 2004 Act	198
C.	Conducting Economic Activity by Foreign Business Entities	198
D.	Requirements for Commencing Economic Activity.....	199
E.	Regulatory Framework of Economic Activities	199
F.	Preferential Treatment of Certain Entities	201
G.	Eliminating Impediments to Conducting Economic Activity	201
IV.	Regulatory Framework of Market Processes	202
A.	Protection of Competition.....	202
B.	Special Regulation of Certain Markets.....	206
C.	Regulation of Energy Markets.....	206
D.	Regulation of Telecommunications	207
E.	Regulation of the Financial Market	208
F.	Regulation of the Water Supply and Sewage Management.....	209
V.	The Role of the State and Local Self-Government in the Economy.....	210

A. The State's Economic Activity	210
B. Privatization of State Enterprises.....	211
C. Restitution of Nationalized Property: An Unsolved Problem..	213
D. Communal Economic Activities	215
VI. Concluding Remarks	217
Selected Bibliography	220
 7. Commercial Law (<i>Dr. Lukasz Gasinski, Artur Nowacki, Jozef Okolski</i>).....	221
I. Introduction	221
A. Historical Background	221
B. Basic Sources of Commercial Law	223
II. Commercial Activities	224
A. Sources of Regulations on Commercial Activities and Types of Agreements	224
B. Creating a Distinct Category of Commercial Activities	225
C. Business Entities.....	225
1. Definitions of Business Activities and of Business Entities.....	225
2. The Rights and Obligations of a Business Entity	225
3. Forms of Economic Activity	226
4. Business Activities Conducted by Foreigners and Foreign Business Entities.....	226
5. Foreign Trade Representative Offices	227
6. Types of Business Entities.....	228
D. The Business Register	228
1. The National Court Register.....	228
2. Accessibility, Reliability and Accuracy of Data.....	229
3. Entries.....	229
4. The Register of Insolvent Debtors.....	229
III. Companies Law	230
A. Historical Background.....	230
B. Structure of the CCC	230
C. Partnerships	231
D. Registered Partnerships	232
1. The Liability of Partners.....	232
2. Representation and Management of the Partnership's Business Affairs	232
E. Limited Liability Partnerships	233
F. Professional Partnerships.....	233
G. Joint-Stock Partnerships	234
IV. Capital Companies (Corporations)	235
A. Introduction	235

B.	Limited Liability Companies	236
C.	Rights and Obligations of Shareholders	236
D.	Property Rights	237
E.	Corporate Rights	237
F.	Governing Bodies: Management Board, Supervisory Board and Shareholders' Meeting	238
G.	Joint-Stock Companies	239
	1. Introduction	239
	2. Shareholders' Rights	239
	3. Shares	242
	4. Shareholders' Obligations	242
H.	Supervisory Board and Management Board	243
	1. Prohibition on Combining Functions	243
	2. Right to Challenge Resolutions	243
	3. Meetings of the Boards	243
	4. Composition of the Boards	244
	5. Elections to the Boards	244
	6. Remuneration and Liability of Boards' Members	245
	7. Directors' and Officers' Liability Insurance	245
	8. Management Board's Functions and Powers	246
	9. Supervisory Board's Functions and Powers	246
I.	Shareholders' Meeting	247
J.	General Meeting's Scope of Powers	247
K.	Buy-Out	248
L.	Participation in Shareholders' Meeting	248
M.	Hostile Takeovers	249
V.	Law on Cooperatives	250
	A. Membership in a Cooperative	250
	B. Rights and Obligations of Members	251
	C. Governing Bodies	251
	D. Supervisory Board	252
	E. Management Board	252
VI.	Bankruptcy Law	252
	A. Bankruptcy Capacity	252
	B. Proceedings for Declaring Bankruptcy	253
	C. The Court and the Judge-Commissioner	254
	D. The Bankruptcy Trustee	254
	E. The Court-Appointed Receiver and Administrator	255
	F. The Creditors' Meeting and Council	255
	G. The Effects of the Bankruptcy Declaration on the Bankrupt Entity	255
	H. The Consequences of the Bankruptcy Declaration on the Bankruptcy Estate	256

I.	The Consequences of the Bankruptcy Declaration on the Bankrupt Entity's Obligations and Liabilities	257
J.	The Consequences of the Bankruptcy Declaration on Court and Administrative Proceedings	257
K.	Determining the Due Receivables	257
L.	The Arrangement of the Bankrupt Entity with Its Creditors ...	258
M.	Liquidation of Bankruptcy Estate Assets.....	259
N.	The Division of Bankruptcy Estate Funds.....	259
O.	Rehabilitation Proceedings	259
	1. The Manner of Proceedings.....	259
	2. The Consequences of Initiating Rehabilitation Proceedings	259
P.	The Arrangement.....	260
VII.	The Law on Public Trading in Securities.....	260
A.	Introduction	260
B.	The Definition of a Security	261
C.	The Securities and Exchange Commission.....	261
D.	Brokers and Investment Advisors.....	262
E.	Conducting Brokerage Activities	262
F.	Admitting Securities to Public Trading	262
G.	Stock Exchange and Over-the-Counter Market.....	263
H.	The National Depository for Securities	263
I.	Large Blocks of Securities.....	263
J.	Civil and Penal Liability	264
K.	Rules of Good Corporate Governance.....	264
VIII.	The Bonds Act	265
A.	Entities Authorized to Issue Bonds.....	265
B.	Form of Bonds	266
C.	Rights Incorporated in Bonds	266
D.	Methods of Issuing Bonds	266
IX.	The Ordinances on the Bills of Exchange and the Checks	267
A.	Types and Structure of Bills of Exchange	267
B.	Formal and Substantive Requirements of Bills of Exchange and Their Abstract Nature	267
C.	Unconditionality of the Obligation.....	268
D.	Transferability of Bills of Exchange.....	268
E.	Issuing and Accepting a Bill of Exchange.....	269
F.	Guaranteed Bills of Exchange	269
G.	Payment.....	269
H.	Checks and Their Structure	270
I.	Issuing a Check.....	270
J.	Payment of Checks	270
X.	Concluding Observations.....	271

Selected Bibliography	273
8. Labor Law (<i>Ludwik Florek</i>)	275
I. Introduction	275
A. Historical Background	275
B. Sources of Labor Law	277
II. Individual Labor Law	278
A. The Labor Relationship and Types of Employment Contracts	278
B. Substance and Form of the Employment Contract	279
C. Rights and Obligations of the Parties	281
D. Termination of an Employment Relationship	282
E. Group Layoffs	285
F. Anti-Discrimination Regulations	286
G. Temporary Employment	287
H. Employment of Foreigners in Poland	288
III. Collective Labor Law	289
A. Sources of Collective Labor Law	289
B. Trade Unions	290
C. Freedom of Employers to Associate	292
D. Freedom of Negotiations	293
E. Right to Strike	294
F. Impact of International Labor Law Instruments	296
G. Adapting Polish Labor Law to EU Law	298
IV. Concluding Observations	298
Selected Bibliography	300
9. Intellectual Property (<i>Jan Bleszynski</i>)	303
Part I: Copyright Act	303
I. Introduction	303
A. Historical Background	303
B. Preparatory Legislative Activities and Assumptions Behind the 1994 Act	305
II. The Current Copyright Law	307
A. The Concept of 'Work'	307
B. The Scope of Application of the 1994 Copyright Act	309
C. The Subjects of Copyright Protection	309
D. The Substance of the 1994 Copyright Act	312
E. Permitted Use	318
F. The Duration of Economic Copyrights	318
G. Audiovisual Works and Computer Programs	319
H. The Protection of Personal Copyright	320
I. The Protection of Economic Copyrights	320
III. Related Rights	321

A.	The Substance of Related Rights	321
B.	Rights in Artistic Performances	322
C.	Rights in Original Audio and Video Recordings	322
D.	Rights in Broadcasts	323
E.	Rights to First, Annotated and Scholarly Editions	323
F.	Organizations for the Collective Management of Copyright and Related Rights	324
G.	Criminal Liability	324
Part Two:	Industrial Property Act	325
I.	Introduction	325
A.	Historical Background	325
B.	The Current Legal Framework	325
II.	Basic Principles of the Industrial Property Act	326
A.	Introduction	326
B.	Proceedings Involving Patents, Utility Models or Industrial Designs	327
C.	Transfer of Patent Right	328
D.	Patents	328
E.	Protection of the Right to and from Patents	329
F.	License Agreements	330
G.	Invalidation and Lapse of the Patent	330
H.	Utility Models	330
I.	Industrial Designs	331
J.	Trademarks	332
K.	Indications of Origins	334
L.	Topographies of Integrated Circuits	334
M.	Proceedings Before the Office	336
N.	Pursuing Protection Claims by Litigation	336
O.	Criminal Liability	338
IV.	Concluding Remarks	339
	Selected Bibliography	340
10.	Criminal Law (<i>Stanislaw Frankowski</i>)	341
I.	Historical Background	341
A.	Introduction	341
B.	The Period between the Two World Wars (1918-1939)	341
C.	The Communist Period (1944-1989)	344
II.	The Penal Code of Democratic Poland	347
A.	Reforming the Communist Criminal Law	347
B.	Preparing a New Code	349
C.	Adoption of the Code	350
D.	Attempts to Revise the Code	351
E.	Conceptual Foundations of the Code	351

F.	The General Principles of Liability	352
1.	The Principle of Legality	352
2.	Age Limits	353
3.	The Principle of Culpability	353
4.	Forms of Committing Offenses	355
5.	Circumstances Excluding Liability	356
G.	Responses to Crime	358
1.	Introductory Comments	358
2.	Punishments	358
3.	Penal Measures	361
H.	Sentencing Principles	362
I.	Sentencing Practices	365
J.	Preventive Measures	366
K.	Specific Crimes	366
L.	The Military Part	370
III.	Concluding Remarks	372
	Selected Bibliography	374
11.	Criminal Procedure (<i>Andrzej Murzynowski</i>)	377
I.	Historical Background	377
A.	Introduction	377
B.	The Period Between Two World Wars	377
C.	Communist Criminal Procedure Laws	379
1.	The Early Stage	379
2.	The Period of Gradual Liberalization	381
3.	The 1969 Code of Criminal Procedure	381
4.	The Post-1989 Reforms	382
II.	Preparation of the 1997 Code and Its Subsequent Amendments	383
A.	Preparatory Work	383
B.	Adoption of the New Code and Its Subsequent Revisions	384
III.	The Current Shape of the Code	385
A.	Introductory Provisions (Arts. 1-23a)	385
B.	The Court (Arts. 24-44)	386
C.	Parties to the Proceedings (Arts. 45-91)	387
D.	Procedural Actions (Arts. 92-166)	388
E.	Evidence (Arts. 167-242)	389
F.	Coercive Preventive Measures (Arts. 243-295)	392
G.	Pretrial Proceedings (Arts. 297-336)	395
H.	Proceedings at the First-Instance Court (Arts. 337-424)	397
I.	Appellate Proceedings (Arts. 425-467)	399
J.	Special Proceedings (Arts. 468-507)	400
K.	Extraordinary Appellate Measures (Arts. 518-548)	401
L.	Proceedings after the Final Judgment has Become Valid	

(Arts. 549-577)403

M. Procedure in Criminal Cases Involving International Relations
(Arts. 578-615)404

N. Costs of Court Proceedings (Arts. 616-645).....404

O. Criminal Proceedings in Cases Tried by Military Courts
(Arts. 646-673)404

IV. Concluding Observations.....405

Selected Bibliography407