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Zakład Prawa Cywilnego i Międzynarodowego Prywatnego

**Abstracts of doctoral thesis of mgr Joanna Matczuk “Searching for the border between the idea and its expression – dichotomy rule in non-literal infringement cases regarding literary works.”**

The doctoral thesis consists of ten main chapters.

The first chapter includes introduction into the idea/expression dichotomy as well as presents the main aims of the thesis and describes and explains the scope of the thesis. This chapter is of big importance as it specifies which definitions of literary work, literary work structure and non-literal copying, the author adopts for the sake of the thesis.

Presenting the history and evolution of idea/expression dichotomy is essential for deep understanding of the considerations presented in the further chapters of the thesis. Therefore in chapter two – the development, approach to dichotomy rule over the centuries and its implementation in the legal systems is discussed. A lot is said about the evolution of the doctrine in the United States, being considered as its cradle. In this chapter, the important court cases and approaches to use of the idea/expression dichotomy in practice are presented. Further, the legislation is discussed including the domestic law as well as international law – especially the Polish legal system and its regulations. The last part of this chapter is devoted to axiological justification of dichotomy rule.

The main terms for the dichotomy rule i.e. idea and expression definitions, meaning of these terms, their definition and relation between them is the focus of the third chapter. The above issues are crucial for understanding the essence of the idea/expression dichotomy and important as any doubts regarding them may cause the obstacles in applying the dichotomy rule. Particularly, the possible concepts of understanding of idea and expression in copyright law are presented and their relation towards the works and their elements (i.e. characters, compositions, plots).

The next chapter (four) is to analyse the protection of ideas out of the copyright scope. Examined are inter alia Civil Code regulations, unfair competition and industrial property law. This chapter also refers to the common market practice of contractual regulation on using the creative ideas. In the last part of this chapter, the context of the United States law is taken into consideration – the approach to the protection of ideas out of the copyright scope in this country is described.

The concern of the fifth chapter is applying the idea/expression dichotomy by the courts. The jurisprudence so far does show that the rule is not applied uniformly. Especially interesting are the American courts' decisions, where special 'tests' can be found and some interesting approaches to the issue. The author of the thesis analyses them in this chapter and refers to them in the further chapters of the thesis. Chapter five refers also to the Polish jurisprudence. The overview of jurisprudence is to show that despite the wording of Art. 1 sec. 2<sup>1</sup> PrAut the courts do not deny the ideas copyright protection absolutely.

Chapter six is to describe the issues of the idea/expression dichotomy application. Because of a lot of doubts and discrepancies connected to its use, it is important to consider what causes such a state of matters. In this chapter, the author considers the reasons why the dichotomy rule is thought to be so unprecise and vague and the issue of protection of the ideas by copyright which is quite against the quite obvious wording of the dichotomy rule. The conclusions of the above analysis give some important indication for the proposition of methodology of idea/expression dichotomy application.

Chapter seven is to address the critics of the idea/expression dichotomy formulated in the literature, especially American literature. The idea/expression dichotomy is often criticised as an useless tool in the non-literal copying cases. It is said to be outdated and not giving any helpful guidelines in differentiating between protectable and non-protectable elements. On the other hand, one cannot forget, that the dichotomy rule brings some advantages militating for its application. Describing actual views and assessments of the idea/expression dichotomy formulated by the experts are of big importance for the analysis presented in the thesis.

The subject of Chapter eight is the proposal of understanding and application of the idea/expression dichotomy. For this purpose the author creates some assumptions which could be accepted for making the dichotomy doctrine more useful in practice.

Chapter nine is connected with Chapter eight and consist of the proposition of some juridical standards, which could be helpful for the courts dealing with the idea/expression dichotomy in their practice. Again, the focus is on literary works and their specificity. The author pays attention on the way of analysing the claims, the sense for eliminating from the practise such concepts of the dichotomy rule which broaden the scope of copyright in an unjustified way.

The tenth chapter consists of the summary and conclusions.

A handwritten signature in blue ink, appearing to read 'Jouelma S'.