

JUST*ice* IN CASE*s*

POLISH AND ENGLISH
LEGAL TERMINOLOGY:
CASE BY (AUTHENTIC) CASE

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JOANNA ESQUIBEL



2024

Justice in Cases. Polish and English Legal Terminology Case by (Authentic) Case

Original Text

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The remaining faults are solely upon us.

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TABLE OF CONTENTS

Abbreviations	7
Dear Reader	11
1. Family Law CHILD MAINTENANCE	15
2. Criminal Law FRAUD	67
3. Civil Law DAMAGE	133
4. Civil Law CONTRACTS	185
Time to Say Good Luck	254
APPENDIX 1	255
APPENDIX 2	265
KEY	275
BIBLIOGRAPHY	343
INDEX	359
WHO's WHO	392

SYMBOLS



i.e. / that is



READING



WRITING



LISTENING



SPEAKING (Discussing, Debating)



Term builder



Translation | Interpreting



Self study

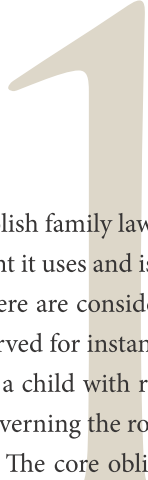
ABBREVIATIONS

(adj.)	<i>as in</i>	adjective [► <i>przymiotnik</i>]
(adj. pple)	<i>as in</i>	adjectival participle [► <i>imiesłów przymiotnikowy</i>]
(n.)	<i>as in</i>	noun [► <i>rzeczownik</i>]
(v.)	<i>as in</i>	verb [► <i>czasownik</i>]
{AmE}	<i>as in</i>	American English (language)
{AuE}	<i>as in</i>	Australian English (language)
{BrE}	<i>as in</i>	British English (language)
{En}	<i>as in</i>	English (language, general variety)
{EuE}	<i>as in</i>	European English (here: an official EU language)
{IrE}	<i>as in</i>	Irish English (language)
{Lat}	<i>as in</i>	Latin (language)
{LGP}	<i>as in</i>	language for general purposes
{LSP}	<i>as in</i>	language for specific/specialized purposes
{NZE}	<i>as in</i>	New Zealand English (language)
{Pol}	<i>as in</i>	Polish (language)
{ScE}	<i>as in</i>	Scottish English (language)
AC	<i>as in</i>	air conditioning
AdmP	<i>as in</i>	Code of Administrative Procedure (Poland) ► kpa {Pol} kodeks postępowania administracyjnego
ADR	<i>as in</i>	alternative dispute resolution
AO USC	<i>as in</i>	Administrative Office of the United States Courts (US)
AoP	<i>as in</i>	Acknowledgement of Paternity (US)
API	<i>as in</i>	Access to Public Information Act (Poland) ► ddip {Pol} ustawa o dostępie do informacji publicznej
App.	<i>as in</i>	Appendix
AU	<i>as in</i>	Australia
ATA	<i>as in</i>	American Translators Association (US)
BB	<i>as in</i>	<i>The Bluebook. A Uniform System of Citation</i>
BDM	<i>as in</i>	Registry of Births Deaths and Marriages (AU)
BL	<i>as in</i>	Banking Law (Poland) ► pb {Pol} prawo bankowe
BLD	<i>as in</i>	<i>Black's Law Dictionary</i>
CCC	<i>as in</i>	Commercial Companies Code (Poland) ► ksh {Pol} kodeks spółek handlowych



1 FAMILY LAW CHILD MAINTENANCE

WARM-UP	17
TERMINOLOGY	22
LANGUAGE FOCUS	44
SWORN TRANSLATOR'S CORNER	62



Polish family law is considered to be part of civil law in the sense that to some extent it uses and is based on many civil law regulations. At the same time, however, there are considerable differences in the nature of both family and civil law, observed for instance in the status of family relations involving the subordinate role of a child with respect to their parents, as well as in certain administrative rules governing the roles of parents in providing care to their children.

The core obligations within families can be found in the Constitution of the Republic of Poland. More detailed ones are defined in the Polish Family and Guardianship Code [FGC], where they are divided on the thematic basis into the following areas: conclusion of marriage, rights and obligations of spouses, matrimonial property regimes, termination of marriage, separation, relations between parents and children, adoption, maintenance obligation, care of a minor, guardianship and custodianship.

The next section will concentrate predominantly on the issues related to the maintenance obligation, which will be discussed with respect to a factual case concerning an issued court order for child maintenance (support), followed later by an analysis of original textual material related to child support petitions and documents on acknowledgement of paternity.



SWORN TRANSLATOR'S CORNER

The quickest way to establish paternity is, in general, to register the birth and obtain a birth certificate for your child, which – as of 1989 – is one of the children's rights under the UN Convention on the Rights of the Child (U.N.T.S. 1577 p. 3)⁸:

Art. 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. [...]

Art. 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. (U.N.T.S. 1577 p. 3)

In Poland, the state agency responsible for registering life-cycle events, including birth, name, and parental information, is referred to as the USC [► *Urząd Stanu Cywilnego*⁹]. Upon request of the parties involved, the Head of the USC issues copies of certificates from the registry under their care. A full copy of the birth certificate repeats *verbatim* the content of the entry in the Civil Registry, including additional remarks and official notes. An abridged copy will be limited to the child's last name (surname) and first (given) name(s), sex; country, date, and place of birth; and the parents' family names [► *nazwiska rodowe*] and first names (LROR).¹⁰

In English-speaking countries, the nomenclature differs, often depending on the region and its legal or administrative traditions (compare Australia and New Zealand with the United Kingdom or the US and Canada), cf.:

⁸ Signed by Poland on 26 January 1990 (ratified a year and a half later) and by the United States on 16 February 1995 (not ratified); cf. an interesting interactive visualization at – OHCHR Dashboard.

⁹ A whole catalogue of certificate specimens issued by the Polish government is available in the Register of Public Documents [RDP ► *Rejestr Dokumentów Publicznych*], and each document is characterized in minute detail therein, cf. *Rejestr Dokumentów Publicznych* - RDP - Portal gov.pl (www.gov.pl)

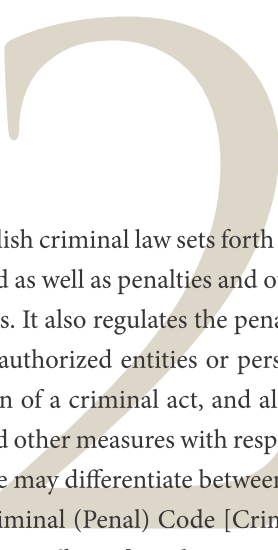
¹⁰ It will also contain the first issue of the child's personal identification number (PESEL), which in Poland for those born before 2000 always starts with the last two digits of the year of birth, followed by the month and day (YYMMDD...). This pattern changes for people born between 2000 and 2099, where we add 20 to the number denoting the month of their birth (YYMM(+20)DD...), e.g. 242203... for those born on 3rd February 2024. This change has been introduced to avoid any risk related to doubling personal identification numbers that might belong to people born on the same day and month but a century earlier/later, e.g. on 3rd February 1924 (240203...) [—AKD].



2

CRIMINAL LAW FRAUD

WARM-UP	69
TERMINOLOGY	76
LANGUAGE FOCUS	99
COURT TRANSLATOR'S CORNER	107



Polish criminal law sets forth provisions concerning different types of acts prohibited as well as penalties and other measures stipulated by law for committing such acts. It also regulates the penal liability for those acts, the status and participation of authorized entities or persons in court proceedings instigated upon commission of a criminal act, and all legal rules specifying the enforcement of penalties and other measures with respect to perpetrators. Within the scope of criminal law, one may differentiate between *offenses* [► *przestępstwa*] which are regulated by the Criminal (Penal) Code [CrimC] and Code of Criminal Procedure [CrimP], and *minor offenses* [► *wykroczenia*] regulated by the Minor Offences Code [MOC] and Code of Minor Offences Procedure [MOP].

In its general part, the Criminal Code [CrimC] covers the following areas: principles of criminal liability, forms of committing an offense, exclusion of criminal liability, penalties and penal measures as well as principles of passing sentences and penal measures, relapse to crime, probation, concurrence of offenses, preventive measures, statutes of limitation, expungement, and liability for offenses committed abroad, while in its special part, it specifies types of offenses and divides them into offenses committed against peace, humanity, and war crimes, offenses against the Republic of Poland and defense capabilities, offenses against life and health, public safety, safety in traffic, the environment, freedom, freedom of conscience and religion, sexual liberty and decency, the family and guardianship, honor and personal inviolability, the rights of people in paid work, state and government institutions, the administration of justice, elections and referenda, public order, the protection of information, the credibility of documents, property, economic circulation, and trading in currencies and securities. It also includes a third part referring only to the military and offenses committed by or against the military service.

The next section will focus on one type of crime – *fraud* [► *oszustwo*] – which will be analyzed with respect to a factual situation involving misleading a person and making misrepresentations concerning properties being sold to that person, that is an offense falling under the category of offenses against property. This will be later accompanied by an analysis of an American and Polish indictment which will also involve a similar type of crime, but committed under different circumstances.

TASK 2.3.B. Have a look at the Polish indictment again and fill in the gaps with the information from the case study at the beginning of this chapter. Whenever the information is not provided in the original (or has been redacted), feel free to fill in the gaps with your own ideas. Cf. Key 2.3.B.

TASK 2.3.C. Translate the completed indictment into English. Cf. Key 2.3.C.

COURT TRANSLATOR'S CORNER

This chapter is predominantly devoted to a criminal case involving fraud, which is considered a non-petty offense – a case which ended up in court. When it comes to court cases from the American perspective, one cannot but think of the publicized developments in the United States, from the Hollywood-style trials of celebrities, like *Depp v. Heard* (2019), to the substantial case of one seemingly innocuous and yet so dangerous a solicitor from the South Carolina dynasty of Murdaughs, tried in *South Carolina v. Murdaugh* (2023). As is the case in highly televised and Netflicized trials, the court of public opinion was divided, and no testimonies nor prosecutors' attempts could really help personal biases. In judicial courts, however, it lies upon the shoulders of the judge and jury to consider both evidence and counsel arguments – and decide on the guilt or innocence of the defendant. Here, the public opinion is valid insomuch as the jury is constituted of lay²⁷ members of the society. But what about countries with no jury, like Poland? Let us peek into selected courtrooms on both sides of the pond and see a glimpse of this judicial spectacle, a peculiar theater of emotion and imagination.²⁸

PRACTICE 2.4. The following practice is aimed at equipping you, as a budding court translator and interpreter,²⁹ with rudimentary COURTROOM ORIENTATION.

Firstcomers to the courtroom are often unsure who's who in the court drama. Granted, the well-coined image of a judge and jurors is omnipresent in the mass

²⁷ As in: with no bar membership nor legal education.

²⁸ This imagery after Jabłońska-Bońca (2023: 76)

²⁹ We need to state here that even though those who translate in court are often referred to as translators, their task is in fact to interpret (i.e. translate orally, cf. flashcards in Task 1.1.B.). While some courts will task their staff with translating documents relating to a case, court interpreters are certified or sworn in to interpret what is being said in the courtroom.

3

CIVIL LAW DAMAGE

WARM-UP	135
TERMINOLOGY	140
LANGUAGE FOCUS	147
TECHNICAL TRANSLATOR'S CORNER	173

NTGUILTY

There is no legal definition of what *damage* is in the Polish Civil Code, but it is assumed that damage is a difference arising against the injured person's will between the actual state of the injured person's property and its state which could be factual if an event causing the damage had not taken place.

Damage is one of the first premises on which the liability for damages is based and it may be of two kinds, including a loss [► *damnum emergens*] which constitutes a factual impairment in the property, or a loss of profits [► *lucrum cessans*], which is a hypothetical assessment of what the injured person could have gained, had the unfortunate event not taken place.

Another premise of the liability for damages is a failure to perform or ill performance of a contractual obligation, which is closely related to the concept of guilt for the damage. Again, the Polish Civil Code does not define what guilt is, associating its existence with two elements: objective, which is non-compliance with the generally accepted patterns of behavior, and subjective, which describes the perpetrator's attitude with respect to their will and awareness of the deed performed. In Polish law, this guilt may stem from two types of liability: tort liability [► *odpowiedzialność deliktowa*] and contract liability [► *odpowiedzialność kontraktowa*], which are referred to in Articles 415 and 471 of the Civil Code, respectively. While in the former case the existence of guilt is quite obvious, in the latter the concept of guilt is more blurred, as the breaching party may always try to prove that the circumstances leading to their liability and alleged guilt were in fact beyond their control.

The last of the premises of the liability for damages is the cause and effect relationship between the failure to perform, or ill performance, and the actual damage. The case below will involve a situation where an injured party suffered a loss as a result of an ill performance of service and was suing the guilty party for damages.

This section will be followed by an analysis of two standard vehicle documents, hypothetically related to the above problem, and an authentic claim form which was in fact used in court in that particular case (redacted for our purposes to remove personal data). Then you will be able to compare this pleading with an original English claim form to study differences in the structure and vocabulary.

Court's power to dispense with statements of case

16.8 If a claim form has been—

- (a) issued in accordance with rule 7.2; and
- (b) served in accordance with rule 7.5, the court may make an order that the claim will continue without any other statement of case.

1. 1997 c.27.

Updated: Saturday, 1 October 2022⁸³

TECHNICAL TRANSLATOR'S CORNER

When discussing the liability for damages involving either impairment of property (*damnum emergens*) or a loss of profits (*lucrum cessans*), a rudimentary capacity for Latin and a far-from-rudimentary knowledge of the legal systems in both the source and target cultures are a *sine qua non*. Another essentiality is a certain command of LSP in multilingual contests.



LSP - LANGUAGE FOR SPECIFIC/SPECIALIZED PURPOSES (as opposed to LGP, i.e. language for general purposes).

In the broadest terms, while LSP syntax, morphology, and basic vocabulary stem from the language for general purposes, its distinct terminology, i.e. scientific/technical terms – and to an extent grammar – are unique to a selected professional area/object of operation. LSP is used in specific circumstances / by a specific social group of people to communicate a specialized message for a specific purpose.

LSP may include *technical jargon* or *technical lect*, such as that used in car damage and repair reports, as well as *legalese*, which is a specific type of LSP used in legal circumstances for legal purposes (cf. Case 1).

⁸⁴ For instance in Legal English there are many examples of grammatical rules of LGP being broken (in other words, what is ungrammatical in LGP is accepted in LSP), e.g. the word order, some plural forms, the use of *such*, the use of articles, etc. [—AKD].



4 CIVIL LAW CONTRACTS

WARM-UP	187
TERMINOLOGY	191
LANGUAGE FOCUS	211
SWORN TRANSLATOR'S CORNER	225

4
In Poland, legal transactions, *e.g.* contracts, their types, formation, and ways of termination are regulated by the Civil Code but also by other laws, such as the Banking Law (BL ▶ *prawo bankowe*) in the case of a credit contract (BL Art. 69) or the Labor Code (LC ▶ *prawo pracy*) in the case of an employment contract (cf. Case Two above).

In common law, this regulation is to a large extent in the hands of judges, which accounts for less consistency and more ‘freedom’ in the way the provisions of contract law are enforced. Great Britain, however, in the 19th century introduced the Sale of Goods Act (amended in 1979), which has now been used as a form of codification of various contract law rules and a legal basis to resort to in search for legal remedies.⁸⁹ The basic pillars of all those contracts stand on the foundation of four elements: *an offer*, *an acceptance* of the offer, *a declaration of intent* to enter into legal relations, and *consideration*, all negotiated between the parties to the contract.

Both Polish and English contracts are characterized by specific structures, wordings, traditional forms and conventions, which is particularly visible in the case of common law agreements, including all typical Legal English features (cf. Case One above), historically justified expressions, lengthy clauses, and archaic language. In the following sections, you will find a few descriptions and examples of real-life situations involving a selection of contracts, which should give you an insight into various aspects related to contract conclusion, performance, and drafting. The analysis will involve a purchase agreement (in the main case), a settlement agreement, and a sample goods, services and consultant contract, with a plot twist for dessert: a notary public commission application.

⁸⁹ In the US, one of the major sources of law governing the sale of goods right next to the common law of contracts is the Uniform Commercial Code (UCC) [—JJE].

SWORN TRANSLATOR'S CORNER

In the first Sworn Translator's Corner above (p. 64), we mentioned the unique nature of our work as sworn translators – work that, ultimately, will always be fraught with legal responsibility. What differentiates a court, chartered, or sworn translator from others is not only the ability to transfer specialized meaning across languages but also the power vested in them to certify the conformity of their translation with the original document. Below you'll find a handful of tips on how to deal with extra-linguistic elements of source documents in translation. Rooted in guidelines developed by the Polish Society of Sworn and Specialized Translators, the know-how we share is supported by decades of our own experience.

PRACTICE 4.5. Before you start the translation proper, you ought to define and properly describe the source text you are about to certify in the target language, starting with determination of whether (i) the SL text is an official/formal document or a private statement and (ii) whether you deal with the original or a copy.

To start with the formalities, definitions across languages agree *a document* is a collection of data [► *zbiór danych*] that provides substantial information serving as proof or evidence, which corresponds with the Latin etymology of the word [► *documentum* {Lat} 'lesson, proof, instance, specimen'], cf.

materiał w postaci tekstu, fotografii lub jakiegokolwiek przedmiot, mający wartość dowodową lub informacyjną. (*PWN*, dokument)

Something written, inscribed, etc., which furnishes evidence or information upon any subject. (*OED*, document)

an original or official paper relied on as the basis, proof, or support of something [...]; something (such as a photograph or a recording) that serves as evidence or proof. (*MW*, document)

Curiously, some modern legalese seems more lenient than the LGP dictionaries quoted above. The Polish Civil Code, for instance, defines a *document* broadly as any data carrier that enables access to said data.¹⁰² Other codes add the legal nature (constituting “evidence, legal relationship, or a circumstance of legal significance,”

¹⁰² „Dokumentem jest nośnik informacji umożliwiający zapoznanie się z jej treścią” (cf. CivC Art. 773 —Eng. transl. JJE).

1

APPENDIX EDITORIAL NOTES FOR LEGAL WRITING

ILLUSTRATION 1A: Numbers and digits	256
ILLUSTRATION 1B: Capitalization	260
ILLUSTRATION 1C: Forms of address in legal writing	261
ILLUSTRATION 1D.: Geographical names in Legal English	262

2

APPENDIX COURTROOM LAYOUTS

ILLUSTRATION 2.A. British courtroom layout	266
ILLUSTRATION 2.B. Polish courtroom layout	268
ILLUSTRATION 2.C. American courtroom layout	270
ILLUSTRATION 2.D. European Union courtroom layout	272

BIBLIOGRAPHY

ACTS, LAWS, AND STATUTES	344
COURT DECISIONS	348
DICTIONARIES, ENCYCLOPEDIAS, STYLESHEETS, AND GUIDELINES	349
SPECIAL STUDIES	351
INTERNET RESOURCES ON LAW AND LEGAL ENTITIES	355
FORMS AND TEMPLATES	357