

Author: Michał Kućka

Title: Kształtowanie współwłasności przez współwłaścicieli ze szczególnym uwzględnieniem współwłasności przymusowej / Shaping co-ownership by co-owners with particular emphasis on compulsory co-ownership

Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law”)

Year: 2023, vol.: XXXII, number 3 pages: 397-463

Keywords: co-ownership, ownership, freedom of contract, default rules, *ius in re*

Discipline: Law (Civil Law)

Language: Polish

Document type: Article

Publication order reference: Jagiellonian University Cracow [m.kucka@uj.edu.pl]

Abstract:

The article presents the character of the norms regulating the co-ownership in the Polish Civil Code of 1964. It is argued that the Polish legislator used – exceptionally – default rules to set forth the management and the manner of using a co-owned thing. As the co-ownership (like ownership) is an absolute right, the legislator at the same time protects the interests of third parties by conditioning the effectiveness of the legal act of the co-owners changing the default rules on co-ownership on the awareness of the acquirer of the share in co-ownership of these acts. It is disputed that the effectiveness of these acts is limited not only to acquirers of shares but also any third parties – i.e. co-owner’s creditors. As the result co-owners are free to shape their common right as they choose. Their freedom is vast as it is said that it should be proportional to the effects of encumbering the thing with a limited real right – a right of usufruct (as then the owner or co-owner is left with just *ius nudum*). The legal act of shaping the co-ownership is deemed as the act of disposition of the co-ownership (the change of its substance) as the opposition to the concept of real obligations (the concept of real obligations is deemed as inapt to regulate especially the management of the co-owned thing). The article focuses on compulsory or quasi-compulsory co-ownership as it is more likely that in those cases co-owners will try to stabilize their rights and obligations under co-ownership, especially they will divide the usage of the thing or entrust a natural or a legal person to manage the co-owned thing or set forth the rules of management. The article is an introductory study to default rules in *ius in re* regulations.