Slide 1

Polish PIL - Law Applicable to: Juridical Acts, Representation, Powers of Attorney, Limitation and Prescription

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Outline of the lecture

- Basic notions: law applicable to juridical acts – form, content and effects
- Law applicable to the legal representation, conflict-law implications of its nature
- Power of attorney: 'tangent' problems between the PIL and Civil Procedural Law
- Prescription of claims under the PIL (characterization and applicable law)

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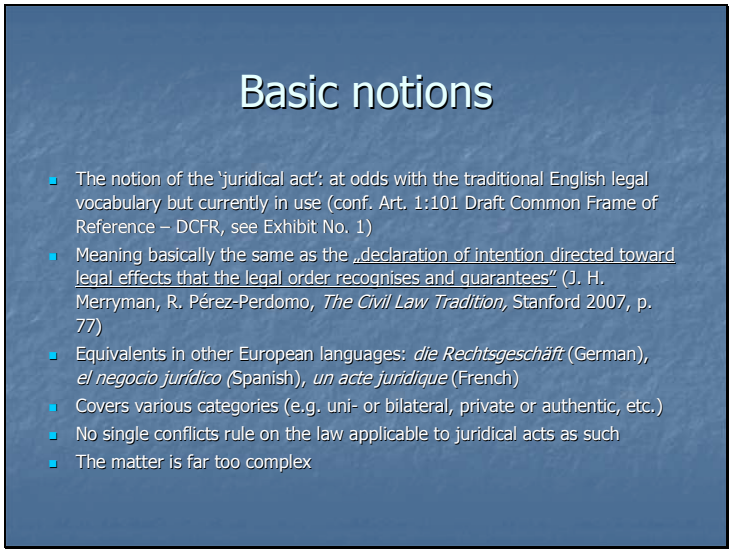
Basic notions
The notion of the 'juridical act': at odds with the traditional English legal vocabulary but currently in use (conf. Art. 1:101 Draft Common Frame of Reference – DCFR, see Exhibit No. 1)
Meaning basically the same as the „declaration of intention directed toward legal effects that the legal order recognises and guarantees" (J. H. Merryman, R. Pérez-Perdomo, The Civil Law Tradition, Stanford 2007, p. 77)
Equivalents in other European languages: die Rechtsgeschäft (German), el negocio jurídico (Spanish), un acte juridique (French)
Covers various categories (e.g. uni- or bilateral, private or authentic, etc.)
No single conflicts rule on the law applicable to juridical acts as such
The matter is far too complex

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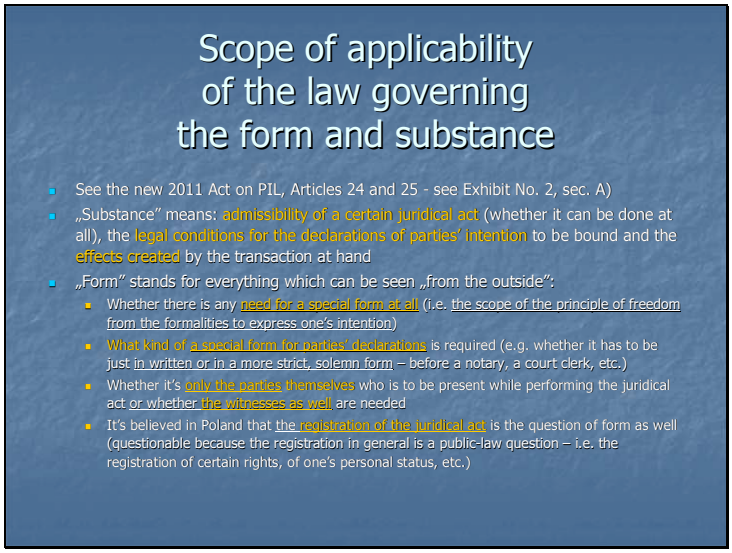
Scope of applicability
of the law governing
the form and substance
See the new 2011 Act on PIL, Articles 24 and 25 - see Exhibit No. 2, sec. A)
„Substance" means: admissibility of a certain juridical act (whether it can be done at all), the legal conditions for the declarations of parties' intention to be bound and the effects created by the transaction at hand
„Form" stands for everything which can be seen „from the outside":
Whether there is any need for a special form at all (i.e. the scope of the principle of freedom from the formalities to express one's intention)
What kind of a special form for parties' declarations is required (e.g. whether it has to be just in written or in a more strict, solemn form – before a notary, a court clerk, etc.)
Whether it's only the parties themselves who is to be present while performing the juridical act or whether the witnesses as well are needed
It's believed in Poland that the registration of the juridical act is the question of form as well (questionable because the registration in general is a public-law question – i.e. the registration of certain rights, of one's personal status, etc.)

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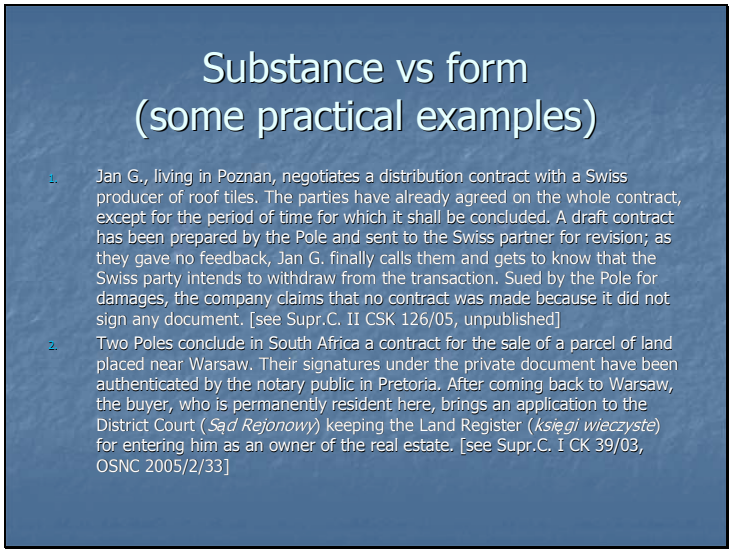
Substance vs form
(some practical examples)
1. Jan G., living in Poznan, negotiates a distribution contract with a Swiss producer of roof tiles. The parties have already agreed on the whole contract, except for the period of time for which it shall be concluded. A draft contract has been prepared by the Pole and sent to the Swiss partner for revision; as they gave no feedback, Jan G. finally calls them and gets to know that the Swiss party intends to withdraw from the transaction. Sued by the Pole for damages, the company claims that no contract was made because it did not sign any document. [see Supr.C. II CSK 126/05, unpublished]
2. Two Poles conclude in South Africa a contract for the sale of a parcel of land placed near Warsaw. Their signatures under the private document have been authenticated by the notary public in Pretoria. After coming back to Warsaw, the buyer, who is permanently resident here, brings an application to the District Court (Sąd Rejonowy) keeping the Land Register (księgi wieczyste) for entering him as an owner of the real estate. [see Supr.C. I CK 39/03, OSNC 2005/2/33]

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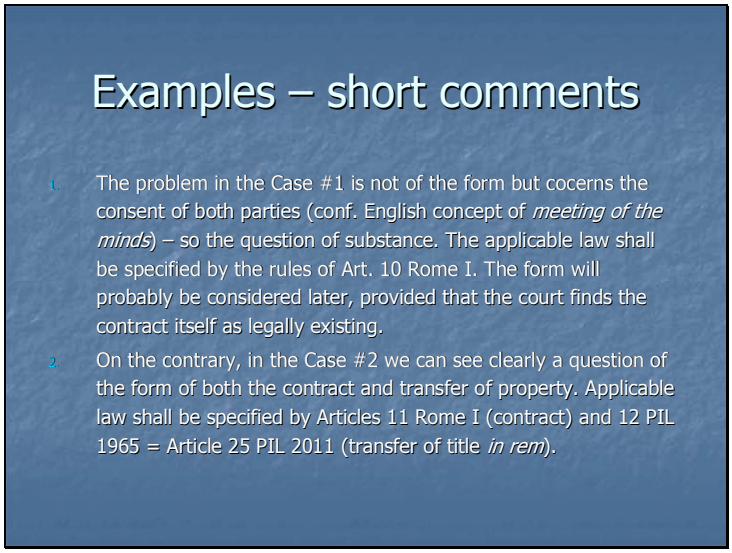
Examples – short comments
1. The problem in the Case #1 is not of the form but cocerns the consent of both parties (conf. English concept of *meeting of the minds*) – so the question of substance. The applicable law shall be specified by the rules of Art. 10 Rome I. The form will probably be considered later, provided that the court finds the contract itself as legally existing.
2. On the contrary, in the Case #2 we can see clearly a question of the form of both the contract and transfer of property. Applicable law shall be specified by Articles 11 Rome I (contract) and 12 PIL 1965 = Article 25 PIL 2011 (transfer of title *in rem*).

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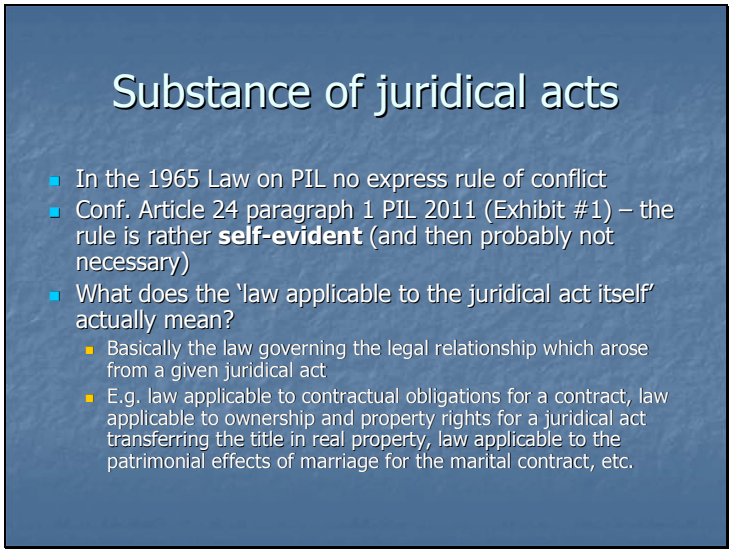
Substance of juridical acts
In the 1965 Law on PIL no express rule of conflict
Conf. Article 24 paragraph 1 PIL 2011 (Exhibit #1) – the rule is rather **self-evident** (and then probably not necessary)
What does the 'law applicable to the juridical act itself' actually mean?
Basically the law governing the legal relationship which arose from a given juridical act
E.g. law applicable to contractual obligations for a contract, law applicable to ownership and property rights for a juridical act transferring the title in real property, law applicable to the patrimonial effects of marriage for the marital contract, etc.

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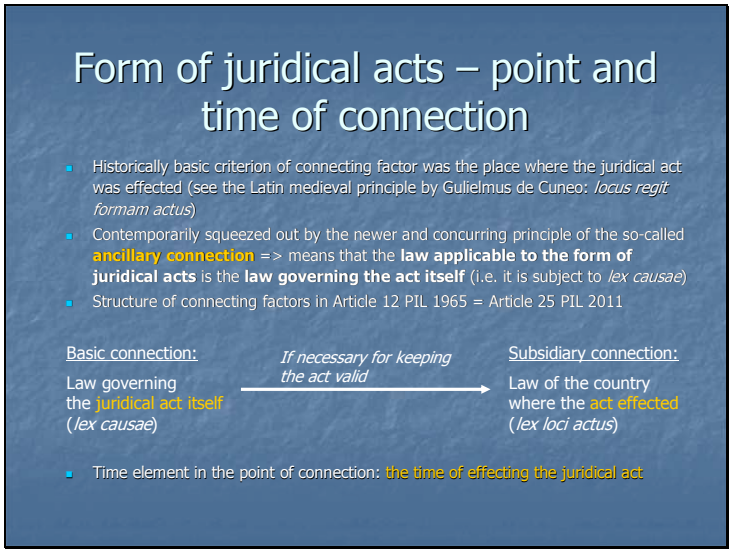
Form of juridical acts – point and time of connection
Historically basic criterion of connecting factor was the place where the juridical act was effected (see the Latin medieval principle by Gulielmus de Cuneo: locus regit formam actus)
Contemporarily squeezed out by the newer and concurring principle of the so-called ancillary connection => means that the law applicable to the form of juridical acts is the law governing the act itself (i.e. it is subject to lex causae)
Structure of connecting factors in Article 12 PIL 1965 = Article 25 PIL 2011
Basic connection:
Law governing the juridical act itself (lex causae)
If necessary for keeping the act valid
Subsidiary connection:
Law of the country where the act effected (lex loci actus)
Time element in the point of connection: the time of effecting the juridical act

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Form of juridical acts – deviations from the above-mentioned scheme

Under the Rome I Regulation and the new PIL Act 2011 – **unlike the current regulation of Article 12 PIL 1965** :

- Possibility (Art. 11 (5) Rome I) or necessity (Article 25 (2) PIL 2011) of applying the law of the country in which the immovable property is situated for the form of juridical acts concerning the transfer of property
- Special rule for distance (*inter absentes*) contracts: where the both parties are in different countries at the moment of entering into the act, the law of either party's country may apply (Art. 11 (2) Rome I, Art. 25 (1) 3rd sentence PIL 2011)

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Judgment of the Supr. Court 20.1.1998, I CKN 345/97, Supr.C.Rep.-Civ. [OSNC] 1998/9/137

- Owner of an immovable residing in the USA authorized another person to sell his real property in Poland – Local form of the deed (notary public in one of the American States authenticated the principal's signature) – Application for entry in the Land Register dismissed on the grounds that the form of the authorization deed was not in accordance with Article 99 of Polish Civil Code (requirement of a notarial deed where such a form shall be required for the authorized juridical act itself)
- Extraordinary appeal to the Supreme Court well founded
- The contract for sale and the authority to enter into the contract on one's behalf are not the same thing
- The same concerns the form of the contract and of the authorisation
- The power to sell an immovable should be subject to the law of the country where the immovable is situated
- The form, however, is another issue – Article 12 of the Law as a general rule which covers all the juridical acts, unless otherwise stated
- No exceptions for the sale of, and transfer of a title in, the immovable property – the law applicable to form specified by **Article 12 PIL 1965**

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Judgment of the Supr. Court 8.1.2004, I CK 39/03, Supr.C.Rep.-Civ. [OSNC] 2005/2/33

- Contract for the sale of Polish parcel of land between two Poles concluded in Pretoria, South Africa – authentication of parties' signatures in the private document – application for entering the transaction and the buyer's title into Polish Land Register – dismissed on the grounds of applicability of Article 158 of Polish Civil Code (requirement of a notarial deed in respect to alienation of title in immovable property)
- Extraordinary appeal to the Supreme Court well founded
- The standpoint of the ordinary courts unjustified as they paid no regard to the conflict rules of the 1965 PIL
- As to the substance, the sale of immovable property and transfer of the title to the buyer are subject to the law of the country where the immovable property is situated (Article 24, 25 para. 2 PIL 1965)
- The law applicable to the form of juridical act, however, is specified by another legal rule– namely by Article 12 of the Law, with no exception for the transactions concerning property rights in immovables
- Article 12 PIL 1965 is held applicable for such transactions, too

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Judgment of the Supr. Court 2.12.2004, V CK 323/04, Supr.C.Rep.-Civ. [OSNC] 2005/12/209

- An extra-marital child of Polish nationality (as the both parents) born in Germany – her father acknowledged the newborn before a German administrative body – after coming back to Poland, he commenced the court proceedings for annulment of the act of acknowledgement, arguing that the form of the foreign acknowledgement of a Pole may be effected only before the Polish consul (formerly Article 79(1) = current Art. 73(4) of the Family and Guardianship Code) – According to the ordinary courts judging the case, determining of the competent organ is covered by the scope of Article 12 PIL 1965 – they found the litigious acknowledgement valid – the applicant's extraordinary appeal to the Supreme Court based on the ground of Article 19 PIL 1965 (law applicable to the substance of relationships between a child and his/her parents)
- Extraordinary appeal dismissed
- The child acknowledgement is a kind of the juridical act – its form subject to Article 12 PIL 1965
- Issue of the authority competent to take an affidavit organ is not the question of substance but **of the form**
- Acknowledgement abroad can be effected in a form prescribed either by the law of nationality of the child at the time of effecting the act, or by the law of the country in which the act itself is effected
- The rule on the consular form of acknowledgement is not an obligation but only a facilitation for the Poles who reside in a foreign country

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Judgment of the Supr. Court 17.10.2008, I CSK 153/08, http://www.ppm.mateuszpilich.edh.pl/

- Polish national residing in the country and his sister living for years in Sweden inherited an immovable property in Warsaw – the applicant's sister decided to renounce her rights and to donate her share in the inherited immovable to her brother – the deed of gift in the form of private (not authentic) document signed by the donor in Sweden and by the donee in Poland – effects of the act questioned by one of the successors – the ordinary courts found the gift deed valid under Swedish law, irrespective of the reservation of notarial act in Article 890 Civ.c.
- Extraordinary appeal effective: the judgment of the lower court overruled and the case remanded
- The juridical act as a whole was **effected not in Sweden** but in Poland
- The content of Article 12 PIL 1965 does not fit the distance contracts (*inter absentes* = between the parties staying in different countries at the moment of its conclusion), the form of which must be always in accordance with the law applicable to the substance (*lex causae*)

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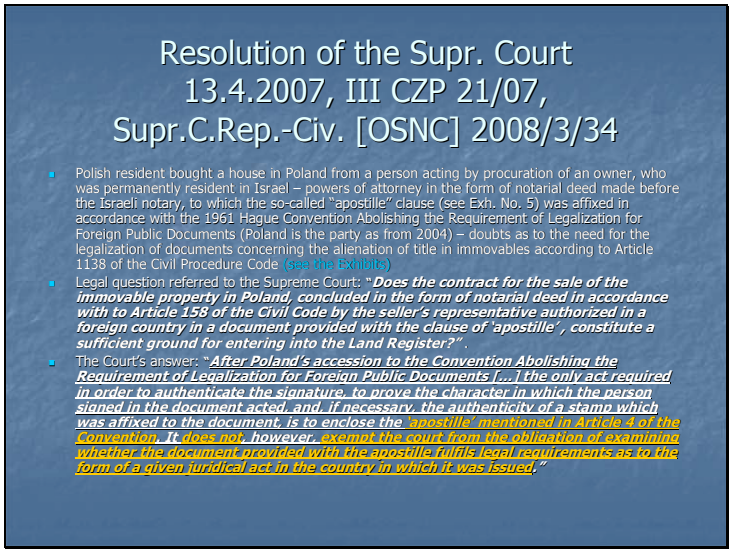
Resolution of the Supr. Court
13.4.2007, III CZP 21/07,
Supr.C.Rep.-Civ. [OSNC] 2008/3/34
Polish resident bought a house in Poland from a person acting by procuration of an owner, who was permanently resident in Israel – powers of attorney in the form of notarial deed made before the Israeli notary, to which the so-called "apostille" clause (see Exh. No. 5) was affixed in accordance with the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Poland is the party as from 2004) – doubts as to the need for the legalization of documents concerning the alienation of title in immovables according to Article 1138 of the Civil Procedure Code (see the Exhibits)
Legal question referred to the Supreme Court: "Does the contract for the sale of the immovable property in Poland, concluded in the form of notarial deed in accordance with to Article 158 of the Civil Code by the seller's representative authorized in a foreign country in a document provided with the clause of 'apostille', constitute a sufficient ground for entering into the Land Register?".
The Court's answer: "After Poland's accession to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents [...] the only act required in order to authenticate the signature, to prove the character in which the person signed in the document acted, and, if necessary, the authenticity of a stamp which was affixed to the document, is to enclose the 'apostille' mentioned in Article 4 of the Convention. It does not, however, exempt the court from the obligation of examining whether the document provided with the apostille fulfils legal requirements as to the form of a given juridical act in the country in which it was issued."

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Judgment of the Supr. Court 15.7.2005, IV CK 20/05, Supr.C.Rep.-Civ. [OSNC] 2006/6/106

- Polish citizen died in Germany, where he was permanently resident – His juvenile son (Polish and German national) inherited the whole estate – His legal representative at first accepted the inheritance *sine benefitio inventarii* before the Polish court but after getting to know the state of debts, commenced proceedings in Germany on withdrawal of her declaration of acceptance – positive decision of German court – the proceedings in Poland on ascertainment of rights to inheritance – the son of the dead finally recognized as successor – objection of the family of the dead
- Extraordinary appeal based on the grounds that the withdrawal of acceptance of inheritance was ineffective because it was subject to German and not to Polish law which forbade the legal representative to reject the inheritance once it had been accepted
- The Supreme Court dismissed the appeal
- Requirement of obtaining the leave of the Family Court to reject the inheritance on behalf of the juvenile child under the parental authority does not belong to the scope of the notion of „form" within the meaning of Article 12 PIL 1965.

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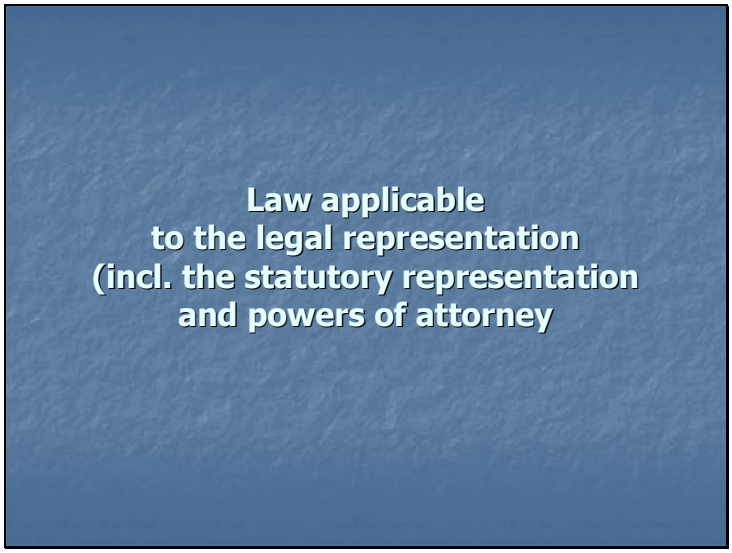
Law applicable
to the legal representation
(incl. the statutory representation
and powers of attorney

Slide 18

Statutory and voluntary representation

- Problematic issue – Polish concept is based on purely „Continental" (practically speaking: German) idea of 'direct representation' (=> *unmittelbare/direkte Vertretung*)
- The representative acts in the name of his or her own, admittedly, but on the account of someone else and then the legal effects of his or her act are attributed to the represented, who him- or herself becomes the party to the legal bond
- The representation may be **statutory** (e.g. legal representation of children by their parents) or **voluntary** (= by the act of authorization, called in *common law* countries the 'powers of attorney')
- No particular conflict rule under the 1965 PIL – conf. Article 22 PIL 2011 (Exhibit No. 6)

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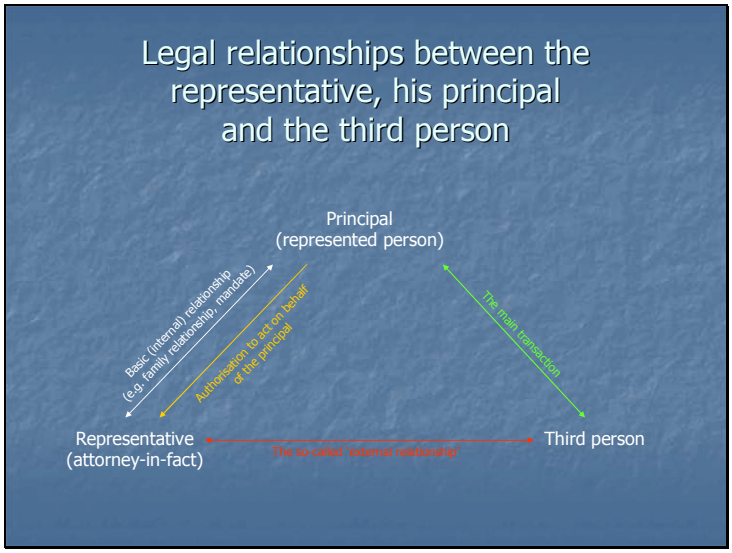
Legal relationships between the representative, his principal and the third person
Principal
(represented person)
Basic (internal) relationship
(e.g. family relationship, mandate)
Authorisation to act on behalf of the principal
The main transaction
Representative
(attorney-in-fact)
The so-called 'external relationship'
Third person

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Statutory representation

- For instance – the representation of a child under age by his/her parents, representation between spouses, etc.
- See Article 22 PIL 2011 - ***Statutory representation shall be subject to the law applicable to the legal relationship from which the authorization to represent arises.***
- The concept has never been questioned by scholars and the jurisprudence of the Supr. Court (see the above-cited judg. 15.7.2005, IV CK 20/05).
- The representation of the child by his/her parents comes within the scope of Article 19 (1) PIL 1965 = Article 56 PIL 2011); the representation between the spouses – see Art. 17 PIL 1965 = Art. 51 PIL 2011.

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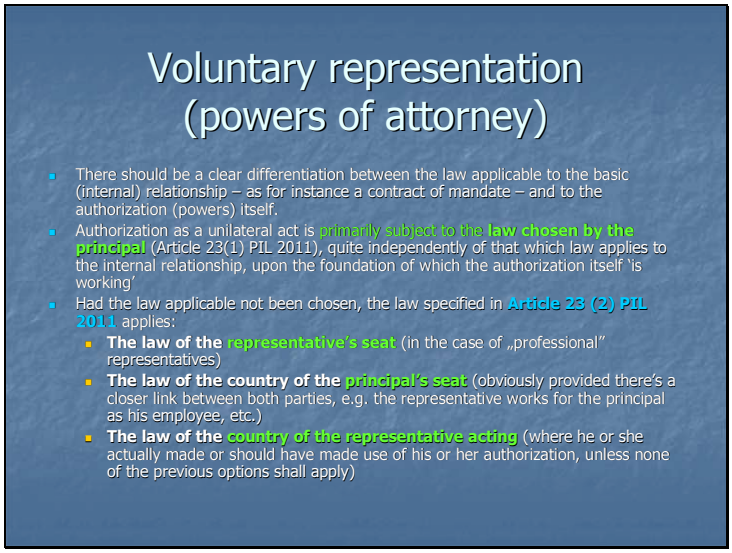
Voluntary representation (powers of attorney)
There should be a clear differentiation between the law applicable to the basic (internal) relationship – as for instance a contract of mandate – and to the authorization (powers) itself.
Authorization as a unilateral act is primarily subject to the law chosen by the principal (Article 23(1) PIL 2011), quite independently of that which law applies to the internal relationship, upon the foundation of which the authorization itself 'is working'
Had the law applicable not been chosen, the law specified in Article 23 (2) PIL 2011 applies:
The law of the representative's seat (in the case of „professional" representatives)
The law of the country of the principal's seat (obviously provided there's a closer link between both parties, e.g. the representative works for the principal as his employee, etc.)
The law of the country of the representative acting (where he or she actually made or should have made use of his or her authorization, unless none of the previous options shall apply)

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Scope of applicable law

- Following questions shall be assessed according to the law specified by the rules of conflict concerning the representation:
  - whether the given powers of attorney is valid and legally effective;
  - what kinds or the powers are available (i.e. general or special powers)
  - what is a consequence of the lack of authorisation or its insufficient scope
- Questions not covered:
  - **whether the authorisation to represent another person is the consequence of a particular 'basic' relationship** (e.g. under Polish law there is an implied authorisation of the employee acting in his/her employer's seat in regard to the clients of the undertaking; the same concerns the contract of mandate, where e.g. the attorney has implied powers from his/her mandant to enter into the agreement with the opposite party to the proceedings) => the law applicable to this latter relationship applies
  - **whether the given juridical act may be effected by the representative and not by the party himself** (e.g. conclusion of marriage by the representative is in fact not the question of representation but that of the validity of marriage) => the law applicable to the external relationship (between the principal and the third person) applies

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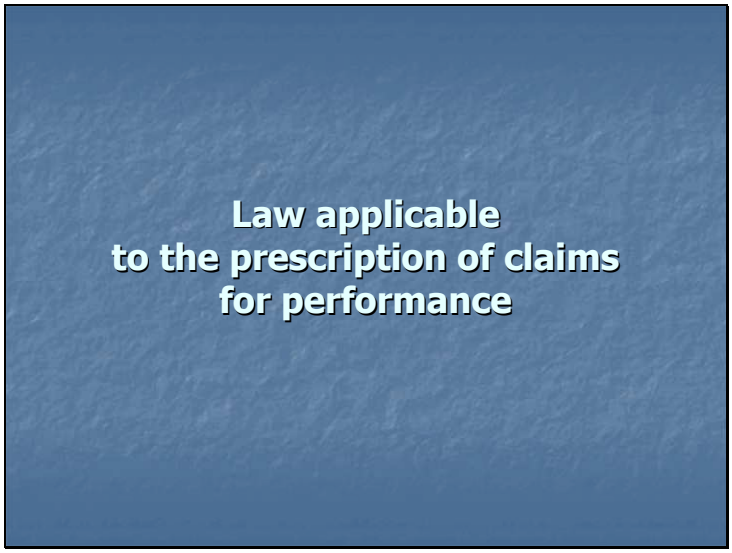
Law applicable
to the prescription of claims
for performance

Slide 24

Characterization

- Difference between *civil* and *common law* countries regarding the character of prescription of claims:
  - **Civil law** – the institution of the substantive law: the right does still exist but due to the lapse of time, its content undergoes a change; the obligor (debtor) may decline to perform by raising a plea before the court. Nonetheless the obligation remains suable.
  - **Common law** distinguishes basically two kinds of prescription (limitation): those which merely bar a remedy (procedural) and those which extinguish a right (substantial). The Continental *prescription of claims* then more or less corresponds to the common-law *limitation of action*, the latter being procedural.
- How to characterize?
  - *Lex fori processualis* principle (*quoad litis ordinem inspicitur locus iudicii*)
  - Possible results – see the famous case of the „Tennessee promissory note" (*Tennessee-Wechsel*) before German Court of the Empire (*Reichsgericht*) 4.1.1882, I 636/81, RGZ 7, 21 ff (Exh. No. 7)?
  - May (or should) the court not take into account the characterisation of the prescription of claims under foreign substantial law?

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Connecting factor

- Ancillary connection of the prescription of claims (=> no independent connecting factor) according to Polish municipal Private International Law:
- Article 13 PIL 1965: prescription shall be governed by the **law applicable to the claim itself**.
- Article 26-27 PIL 2011 (practically speaking, the same rule).

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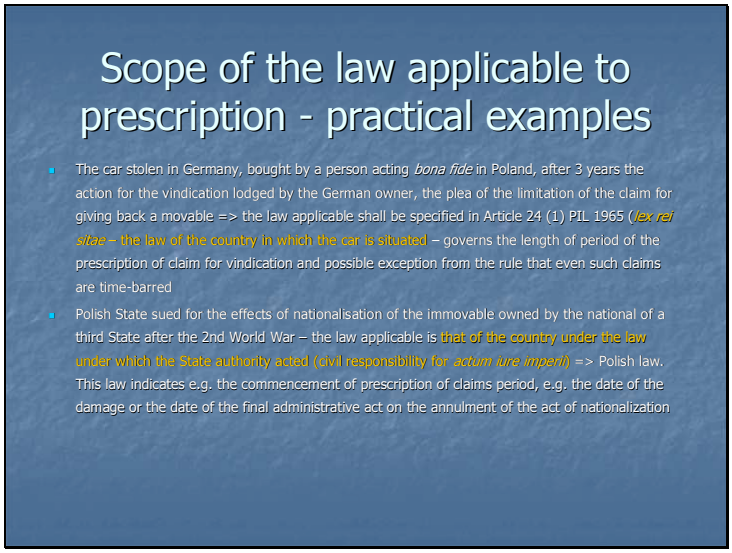
Scope of the law applicable to prescription - practical examples
The car stolen in Germany, bought by a person acting bona fide in Poland, after 3 years the action for the vindication lodged by the German owner, the plea of the limitation of the claim for giving back a movable => the law applicable shall be specified in Article 24 (1) PIL 1965 (lex rei sitae – the law of the country in which the car is situated – governs the length of period of the prescription of claim for vindication and possible exception from the rule that even such claims are time-barred
Polish State sued for the effects of nationalisation of the immovable owned by the national of a third State after the 2nd World War – the law applicable is that of the country under the law under which the State authority acted (civil responsibility for actum iure imperii) => Polish law. This law indicates e.g. the commencement of prescription of claims period, e.g. the date of the damage or the date of the final administrative act on the annulment of the act of nationalization

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Rome I/II

- No particular conflicts rule on prescription of claims
- Result the same as under Polish municipal PIL
- Conf. Art. 15 (1)(h) Rome II:
  - „The law applicable to non-contractual obligations […] shall govern in particular: […] the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation."
- Art. 12 (1)(d) Rome I:
  - „The law applicable to a contract […] shall govern in particular: […] the various ways of extinguishing obligations, and prescription and limitation of actions."

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Particular problems

- Judgment of the Court of Appeal in Katowice, I ACa 1823/04 (unpublished):
  - Two traders: from Poland and the Czech Republic entered into the contract for sale of certain goods. Polish buyer did not pay but finally obliged himself in writing to do so. After more than 2 years from the contract conclusion, the Czech seller sued his partner for the price to be paid. The Pole defended himself raising the plea of limitation of action (=prescription of claim for performance). The court dismissed the action of the buyer taking into account the 2-year limitation period under Article 552 of Civ. Code. On the claimant's appeal, the case was remanded on the ground that the Czech (instead of the Polish) Civil Code should have been applied. True or false?
- Of course false – it would have been true only if the Czech Republic had not been the party to **the 1974 UN Convention on the Limitation Period in the International Sale of Goods** (see the Exhibits)

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UN Convention on the Limitation Period in the Int'l Sale of Goods

- The first work of the United Nations Commission for International Trade Law (UNCITRAL)
- Parties: 28 States to the unamended text, 21 States to the text as amended by the 1980 Protocol
- Basic data:
  - Contains uniform substantive rules for the limitation in the international sale of goods
  - Applies if: (a) both parties have their places of business in different Contracting States, or (b) the law applicable to the contract of sale is the law of the Contracting State (Article 2 and 3 of the Convention)
  - Limitation period – 4 years (Article 8)
  - Counted from the date specified in Article 10 (e.g. the limitation period for the claim arising from breach of contract shall commence on the date on which the breach occured)

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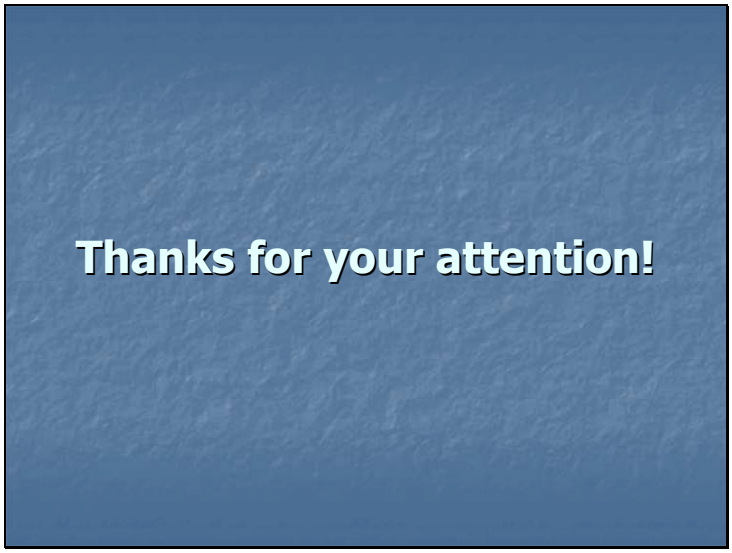

LAW APPLICABLE TO JURIDICAL ACTS, LEGAL REPRESENTATION/POWERS OF ATTORNEY AND THE LIMITATION OF ACTION/PRESCRIPTION OF CLAIMS FOR PERFORMANCE

EXHIBIT NO. 1
DRAFT COMMON FRAME OF REFERENCE
LEGAL DEFINITION OF A 'JURIDICAL ACT'

II. – 1:101: Meaning of "contract" and "juridical act"
(1) A contract is an agreement which is intended to give rise to a binding legal relationship or to have some other legal effect. It is a bilateral or multilateral juridical act.
(2) A juridical act is any statement or agreement, whether express or implied from conduct, which is intended to have legal effect as such. It may be unilateral, bilateral or multilateral.

EXIBIT NO. 2
LEGAL RULES CONCERNING THE LAW APPLICABLE TO FORM OF JURIDICAL ACTS AS IN FORCE IN POLAND

A. Statutory Law

Act of 12 November, 1965
on Private International Law
(in force)

III. Form of juridical acts

Article 12.
The form of the juridical act shall be subject to the law applicable to the act itself. It shall suffice, however, to observe the form prescribed by the rules of law of the country in which the act is being performed.

Act of 4 February, 2011
on Private International Law
(to be in force as from May, 2011)
Section 5
Accomplishment of the juridical act and its form

Article 24.
1. In determining whether the juridical act was effected, the law applicable to the juridical act shall be applied.
2. The party who claims that he did not consent to be bound by the juridical act concerned, may rely upon the law of the country in which he has his habitual of residence if it appears from the circumstances that it would not be legitimate to determine the effects of his conduct in accordance with the law specified in paragraph 1.

Article 25.
1. The form of the juridical act shall be governed by the law applicable to the act itself. It shall suffice, however, to observe the form prescribed by the law of the country in which the act was done. If the contract is being concluded between persons who, at the time of declaring their intentions to be bound, are present in different countries, it shall suffice to observe the form prescribed by the law of either of these countries.
2. Paragraph 1 second and third sentence shall apply neither to the alienation of property nor to juridical acts the subject matter of which is the creation, fusion, division, transformation or liquidation of a moral person or of another organizational unit devoid of moral personality.

3. If the case of a juridical act performed by the representative, the circumstances mentioned in paragraph 1 second and third sentence shall relate to the representative himself.

Further rules
(A Comparative Table)

Act of 12 November, 1965 on Private International Law (in force)	Act of 4 February, 2011 on Private International Law (to be in force as from May, 2011)
Form of marriage – Article 15	**= Article 49**
Form of wills – Article 35 (validity of wills = both formal and material)	**= Article 66**

B. EUROPEAN LAW

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

Article 10
Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.
2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 11
Formal validity

1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.
2. A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.
3. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation, or of the law of the country where the act was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.
4. Paragraphs 1, 2 and 3 of this Article shall not apply to contracts that fall within the scope of Article 6. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.
5. Notwithstanding paragraphs 1 to 4, a contract the subject matter of which is a right in rem in immovable property or a tenancy of immovable property shall be subject to the requirements of form of the law of the country where the property is situated if by that law:
(a) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and
(b) those requirements cannot be derogated from by agreement.

Article 12
Scope of the law applicable

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:
(a) interpretation;
(b) performance;

(c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;
(d) the various ways of extinguishing obligations, and prescription and limitation of actions;
(e) the consequences of nullity of the contract.
2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

C. CONFLICT RULES IN SELECTED INTERNATIONAL LAW INSTRUMENTS

Bilateral treaties (examples)

1) Treaty between the Polish Peoples' Republic and the Republic of Austria on the Mutual Relationships Within the Scope of Civil Law and on the Form of Documents, signed in Vienna on 11 December, 1963:

- Article 24, para. 2 – law applicable to the form of marriage
- Article 26 – law applicable to the form of marital contract (marital agreement)
- Article 38 – law applicable to the form of wills

2) Convention between the Polish Peoples' Republic and the French Republic on the Applicable Law, Jurisdiction and Enforcement of Courts Decisions Within the Scope of Personal and Family Law, signed in Warsaw on 5 April, 1967:

- Article 4, para. 1 – law applicable to the form of marriage
- Article 6, para. 3 – law applicable to the form of marital contract

3) Treaty between the Republic of Poland and the Republic of Lithuania on the Legal Assistance and Relationships in Civil, Family, Labor and Criminal Matters, signed in Warsaw on 26 January, 1993:

- Article 25, para. 2-3 – law applicable to the form of marriage
- Article 35 – general rule on the law applicable to the form of juridical acts
- Article 42, para. 2 – law applicable to the form of wills

Legalization of foreign documents – Apostille

Legalization means an annotation made by the Polish consulates or diplomatic missions, according to which the form and content of the document are approved as being in accordance with the law of the place where the deed was issued. The authenticity of the document is certified as well.

Article 1138 of the Code of Civil Procedure:
Foreign authentic documents have the force of evidence on a par with the Polish authentic documents. Document on the transfer of the immovable property situated in the Republic of Poland shall be certified by the Polish diplomatic mission or consular office. The same applies to a document whose authenticity is questioned by a party to the dispute.

CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC DOCUMENTS

(Concluded 5 October 1961)

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("*huissier de justice*");
b) administrative documents;
c) notarial acts;
d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

a) to documents executed by diplomatic or consular agents;
b) to administrative documents dealing directly with commercial or customs operations.

Article 2

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

Article 3

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.

However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

Country: REPUBLIC OF SOUTH AFRICA

This public document marked "Y"

has been signed by FELICIA MILLS

acting in the capacity of SENIOR ADMINISTRATIVE CLERK

bears the stamp of REGISTRAR OF CLOSE CORPORATION

CERTIFIED

at **PRETORIA** on the **23rd of June 2005**

by ALMINE COCKRELL-VAN DEVENTER

No: **05/1779**

Signature:

DEPT OF FOREIGN AFFAIRS

An example of the *apostille* clause issued in the South Africa (source: https://www.kaltan.co.za/kcci/n/e-apostille.jpg)

EXIBIT NO. 3
LEGAL RULES CONCERNING THE LAW APPLICABLE TO FORM OF JURIDICAL ACTS AS IN FORCE IN POLAND

Act of 4 February, 2011
on Private International Law
(to be in force as from May, 2011)

Section 4
Representation

Article 22.

Statutory representation shall be subject to the law applicable to the legal relationship from which the authorization to represent arises.

Article 23.

(1) Powers of attorney (voluntary representation) shall be subject to the law chosen by the principal. The chosen law may, however, be invoked in regard to the third person only where the latter knew or could readily have known about the choice. The principal may invoke the law chosen in regard to the representative only if the latter knew or could readily have known about the choice.

(2) In the absence of the law choice by the principal, the powers of attorney shall be governed consecutively by:

1) the law of the country of the representative's seat, in which he acts on a permanent basis, or

2) the law of the country, in which the principal's place of business is situated, if the representative acts in this place on a permanent basis, or

3) the law of the country, in which the representative actually acted, representing the principal, or in which he should have acted in accordance with the principal's will.

EXIBIT NO. 4
LIMITATION AND PRESCRIPTION OF CLAIMS FOR PERFORMANCE IN THE PRIVATE INT'L LAW

1. Characterization.

German judgment of the Court of Empire (*Reichtsgericht*) in the case of the "Tennessee promissory note" (*Tennessee-Wechsel Fall*) of 4.1.1882, ref. No. I 636/81, RGZ 7, 21 f.[1]

Problems of characterization arise also in relation to the substantive rules of foreign systems of law, when it comes to the reach of the referral expressed by the German rule of conflict of laws (the so-called *"Nachfrage"*): through the different systematic notions of various legal systems it may happen that particular legal institutions are differently assigned. That is for instance the issue of prescription (*Verjährung*), which is assigned in Germany to the substantive law. If one assume then a claim for which German law specifies applicable a particular foreign legal order, then this referral includes as well its prescription according to the systematic notions of German law, as it encompasses all the substantive law issues. If, however, the applicable legal system contains no rules on the prescription within its substantive law because it sees the prescription as the institution of procedural law, the question arises whether the referral of German law of conflict concerns at this point also the procedural law rules of the specified legal system, even though the German court always applies German and not a foreign procedural law (the *lex fori* maxim).

The following case is a well-known example thereof. […] On the ground the promissory note signed in the US-State of Tennessee, the action at law was brought against the issuer living in Bremen. The applicable law of Tennessee contained no rules on the prescription in its substantive

[1] Short comment by Professor Stephan Lorenz (University of Ludwig-Maximilian, Munich, Germany), available at: www.lrz.de/~Lorenz/urteile/rgz7_21.htm (tranlation from German by M. Pilich).

regulation because it perceived – just as the whole current Anglo-American law usually still does – the prescription of claims as the procedural law institution (the matter here is about the *limitation of action*). On the other hand, as German courts apply always German procedural law according to the *lex fori* principle – which itself is right – yet in the opinion of the Court of the Empire (RG) the American rules on prescription could not be applied because they are procedural, and then the same as to the German ones, as German law of promissory notes was not applicable.

It led to a promissory note which was not subject to prescription at all, notwithstanding that according to the both legal systems as such the promissory note would have been time-barried. The correct solution here, in the way of comparative jurisprudence, would unquestionably have been to perceive the *limitation of action* as a counterpart of the German law prescription and to treat the prescription procedural rules of the law of Tennessee in the way of substantive law characterization as the regulation of the material law, applicable in German courts even despite of the procedural *lex fori* principle (by the way, the RG later in 1934 grinded out this “notch” in an identically mounted case).

2. UN Convention on the Limitation Period.

UNITED NATIONS CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS (NEW YORK, 14 JUNE 1974)

PREAMBLE

The States Parties to the present Convention,

Considering that international trade is an important factor in the promotion of friendly relations amongst States,

Believing that the adoption of uniform rules governing the limitation period in the international sale of goods would facilitate the development of world trade,

Have agreed as follows:

PART I. SUBSTANTIVE PROVISIONS
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Sphere of application

ARTICLE 1
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1. This Convention shall determine when claims of a buyer and a seller against each other arising from a contract of international sale of goods or relating to its breach, termination or invalidity can no longer be exercised by reason of the expiration of a period of time. Such period of time is hereinafter referred to as "the limitation period".

2. This Convention shall not affect a particular time-limit within which one party is required, as a condition for the acquisition or exercise of his claim, to give notice to the other party or perform any act other than the institution of legal proceedings.

3. In this Convention:

(a) "buyer", "seller" and "party" mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or obligations under the contract of sale;

(b) "creditor" means a party who asserts a claim, whether or not such a claim

is for a sum of money;

(c) "debtor" means a party against whom a creditor asserts a claim.

(d) "breach of contract" means the failure of a party to perform the contract or any performance not in conformity with the contract;

(e) "legal proceedings" includes judicial, arbitral and administrative proceedings;

(f) "person" includes corporation, company, partnership, association or entity, whether private or public, which can sue or be sued;

(g) "writing" includes telegram and telex;

(h) "year" means a year according to the Gregorian calendar.

ARTICLE 2

For the purposes of this Convention:

(a) a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the buyer and the seller have their places of business in different States;

(b) the fact that the parties have their places of business in different States shall be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract;

(c) where a party to a contract of sale of goods has places of business in more than one State, the place of business shall be that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract;

(d) where a party does not have a place of business, reference shall be made to his habitual residence;

(e) neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

ARTICLE 3
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1. This Convention shall apply only if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States.

2. Unless this Convention provides otherwise, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. This Convention shall not apply when the parties have expressly excluded its application.