

## Summary of doctoral thesis

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Title of dissertation: *Obligations of the estate in bankruptcy*  
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The subject of the doctoral thesis consists in the issue of legal nature of obligations of the estate in bankruptcy and their impact on the initiation and course of bankruptcy proceedings. The crux of the research matter constituted two research hypotheses, the scope of which may be summarised in the following questions:

- 1) What are the obligations of the estate in bankruptcy and what is their legal nature?
- 2) Is the normative character of the concept of obligations of the estate in bankruptcy a decisive factor in the availability of bankruptcy proceedings and their effectiveness as means of general enforcement?

Analysis of the research matter was conducted in six chapters and was preceded by an introduction and summarized in closing remarks. Each chapter, apart from the principal analysis, includes an introduction presenting research hypotheses and a summary encompassing a brief verification of research hypotheses and partial conclusions.

The following research methods were applied in the dissertation: a dogmatic-legal one, a historic-legal one, empirical one and economic analysis of law.

Chapter I of the dissertation consists in an introduction to the issues of research concerning obligations of the estate in bankruptcy. The essence of the analysed concept from a legal-historic perspective that was presented therein, starting with legislation applicable in Polish territories during the partitions of Poland, all the way to provisions of the Act – Bankruptcy and Reorganisation Law with the wording applicable until 31 December 2015. The research goal of Chapter I was to verify the research hypothesis whether, as of 1 January 2016, in connection with amendment of the existing Article 230 of the BL<sup>1</sup>, a new concept – “obligations of the estate in bankruptcy” – appeared in the Polish legal order or if it was merely a question of organising nomenclature relating to a concept with consolidated tradition in doctrine and judicature.

Chapter II includes a dogmatic-legal analysis, its purpose being to decode the normative meaning of the expression “obligations of the estate in bankruptcy” as it is used by lawmakers in Articles 230 and 343 of the BL and in consequence – an attempt at reconstructing the definition of this expression. For this purpose, interpretation of two statutory expressions: “estate in bankruptcy” and “obligation” was conducted. Reflections in this chapter have an interdisciplinary character – their purpose is to place the researched concept against a backdrop of norms of both private and public law, including tax law. It is demonstrated in Chapter II that the expression “obligations of the estate in bankruptcy” is something of a simplification that encompasses elements of private and public law, while at the same time underlining the separateness of the assets themselves (i.e. the estate in bankruptcy) from the assets’ holder (i.e. the bankrupt entity). The Chapter is concluded by establishing general characteristics of the researched concept in its substantive aspect and constitutes a basis for further detailed reflections.

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<sup>1</sup> Act of 28 February 2003 Bankruptcy and reorganisation law (consolidated text: Journal of Laws of 2003, No. 60, item 535, with subsequent amendments), hereinafter as the “BL”.

Chapter III is a continuation of dogmatic reflections on the essence of obligations of the estate in bankruptcy (substantive aspect). This part of the dissertation presents research of a casuistic character consisting of an analysis of individual legal relations which may result in obligations of the estate in bankruptcy. Above all, it was the wording of Article 230 of the BL that justified the casuistic approach to the researched issue as it includes an open-ended catalogue of various obligations arising in general after declaration of bankruptcy which on the basis of the said provision was included by the lawmakers – based on a dichotomic division – in either the category of “costs of bankruptcy proceedings” or “other obligations of the estate in bankruptcy”. The purpose of this part of dissertation was also to verify a hypothesis based on the assumption that including a given obligation among obligations of the estate in bankruptcy is decided by whether it arose before or after the declaration of bankruptcy. It was demonstrated that this hypothesis, although based on a view of majority of the doctrine and supported by the literal wording of Article 230 of the BL, should in fact be rejected. Furthermore, it was demonstrated in Chapter III that the legal definition of obligations of the estate in bankruptcy is not complete and the division indicated in Article 230 of the BL between “costs of bankruptcy proceedings” and “other obligations of the estate in bankruptcy” is only seemingly dichotomic as there are also obligations of the estate in bankruptcy not included in this provision. In relation to the above, a self-standing understanding of this expression was proposed, including its division into *sensu stricto* obligations of the estate in bankruptcy and *sensu largo* obligations of the estate in bankruptcy, along with respective *de lege ferenda* proposals.

Analysis conducted in Chapters II and III allowed for a determination of the legal nature of the substantive aspect of obligations of the estate in bankruptcy. Chapter IV in turn is dedicated to reflections on vindication and satisfaction of rights resulting from the aforementioned obligation relation. The purpose of the analysis was to, *inter alia*, verify a research hypothesis that rights resulting from obligations of the estate in bankruptcy are vindicated in accordance with general rules applicable outside of bankruptcy proceedings, i.e. disregarding the procedure of a list of debts with their compulsory execution by means of court or administrative enforcement being impermissible. This hypothesis turned out to be true. An analysis of liability for obligations of the estate after the final discontinuation, dismissal or conclusion of bankruptcy proceedings as well as rules of possible personal liability of a receiver for inadequate performance of this type of obligations was also included in this chapter.

After determining the legal nature of obligations of the estate in bankruptcy in both its substantive and procedural aspects, it was then necessary to proceed to their impact on the initiation and course of bankruptcy proceedings. Chapter V was dedicated to this issue and contents of legal norms regulating the issue of so called poverty of the estate in bankruptcy (Article 13 and Article 361 of the BL) as well as the practice of their application by bankruptcy courts were determined there with use of dogmatic-legal and empirical methods. Analysis conducted in Chapter V allowed to confirm a research hypothesis that to precisely define a line between costs of bankruptcy proceedings and other obligations of the estate in bankruptcy is a crucial issue in every bankruptcy case. In relation to the above, it is a task of lawmakers to shape bankruptcy provisions so that the relation between obligations of the estate in bankruptcy and the issue of poverty of the estate in bankruptcy allows for conducting bankruptcy proceedings in the way most favourable for their beneficiaries and in case achieving such a purpose is not feasible, so that it serves a preventative and protective role aimed at eliminating so called “dead entities” from the system.

The issue of economic analysis of provisions regulating the concept of obligations of the estate in bankruptcy was regulated in Chapter VI. Based on the empiric research conducted (case files research), an attempt was made to answer the question whether the applicable legal system is effective. It was researched how the legal system (i.e. provisions regulating the issue of obligations of the estate in bankruptcy) and acts of entities applying law are favourable for pursuing the rule of optimisation. A choice of formal legal instruments allowing to satisfy creditors (main beneficiaries of bankruptcy) on possibly the highest level and in addition being favourable for efficient allocation of resources was understood as effective system of bankruptcy law. Results of substantive and statistical analysis of data resulting from case files of bindingly concluded or discontinued bankruptcy proceedings were presented in this chapter, in particular a relation between the amount of obligations of the estate in bankruptcy and the level of satisfying the creditors, structure of expenses resulting from obligations of the estate in bankruptcy, main reasons for discontinuation of bankruptcy proceedings and its impact on the amount of obligations of the estate in bankruptcy were determined.

A final verification of the proposals and hypotheses provided in the introduction was conducted in the summary. The researched concept was described in a brief way by providing its main substantive and procedural characteristics, its definition was proposed, its impact on initiating and course of bankruptcy proceedings was determined and the assessment of effectiveness of applicable provisions was presented. Furthermore, *de lege ferenda* proposals provided in respective chapters of the dissertation were gathered together in the summary.