



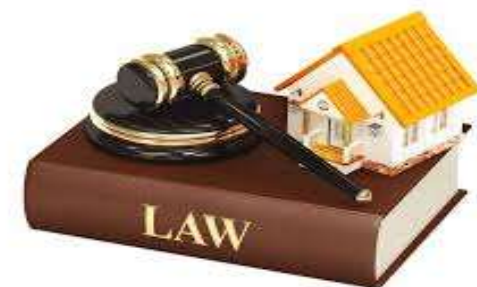
Co-funded by  
the European Union



***Real estate management regulation – Polish perspective.  
Division into things and objects that are not things, movable and immovable  
property (real estate), and the basics of real property law  
Classes no. 3***

**PhD Krzysztof Rózański, assistant professor  
Department of Law and Management of  
Enterprises in Agribusiness  
Faculty of Economics  
Poznań University of Life Sciences  
Poland**

**REAL  
PROPERTY  
LAW**



## Disclaimer



**Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.**



## Highlights:

- The *real estate law* system in Europe was based on French law.
- The first modern civil code was introduced by French Emperor Napoleon in 1804.
- This code served as a model for all other civil law regulations, including *real estate law* in continental Europe. Civil codes, including real estate law regulations in Poland, Germany, Spain and Portugal, were based on the solutions adopted in the French Civil Code of 1804.
- In this light, contemporary *real estate law* regulations in continental Europe are very similar to each other. For this reason, the Polish model of *real estate law* regulation is one of the representative examples of how *real estate law* has been regulated on this continent.

## PROPERTY LAWS



## 1. Division into *things* and *objects that are not things*

- The concept of *things*:

- Art. 45 of Polish *Within the meaning of this Code, „things” are material objects only.*

- However, the Polish Civil Code does not define objects that are not *things*. Therefore, it should be assumed that anything that does not fall within the definition of a *thing* set out in Article 45 of the Civil Code constitutes an *object that is not a thing*.

- In light of the above considerations, *Things* are goods which are both material parts of nature and have an autonomous character, i.e. they are so distinct that they can function as autonomous goods in trade.

PROPERTY LAWS



## 1. Division into *things* and *objects that are not things*

- Therefore, intangible assets (literary or scientific works, inventions), rights and various types of energy *are not things*, as they do not constitute (in the colloquial sense) material parts of nature.

- Due to their lack of self-sufficiency, the following *are not things*: components of things, mineral deposits (minerals), so-called *res omnium communes* (running water, sea water, air).

- Animals are *also not considered as things*.

## PROPERTY LAWS



## 1. Division into *things* and *objects that are not things*

- It is generally accepted that money – both banknotes and coins – are *things*. However, they are sui generis things, as their value does not derive from their physical properties, but from specific guarantees provided by the state.

- Human corpses and their parts are *not things*, unless they are preparations made for research purposes. There is no doubt that a human being is *not a thing either*.

- Only an existing and individualised thing can be the subject of property rights. Therefore, it is not possible to be the owner of a future thing or the owner of 100 kg of grain in a larger mass. In this case, ownership can only arise after a specific amount of grain has been separated from this mass.

- Only individual items are things. Therefore, a collection of rights or a set of rights, i.e. a specific mass of assets traded as a whole, such as property, an enterprise or a farm, does not constitute a thing.

PROPERTY LAWS



## 2. *Movable* and *immovable property* (real estate)

As mentioned earlier in Article 45 of the Civil Code, only material objects are considered things. The things are therefore both *movable* and *immovable property*.

*Movable property* is defined as a type of thing, alongside *immovable property*. The name itself indicates that *movable property* is a movable thing, but neither the Civil Code nor any other legal act contains a definition of this type. However, legal literature indicates that *movable property* is the opposite of *immovable property*. *Movable property* is therefore everything that is not *immovable property* and can be physically moved.

Although the Civil Code does not include a definition of *movable property*, it does include a definition of *immovable property* in article 46.

PROPERTY LAWS



## 2. *Movable* and *immovable property (real estate)*

With accordance with article 46 paragraph 1 of Polish Civil Code, as **immovable property (real estate)** is considered as a *part of the earth's surface constituting a separate object of ownership (land), as well as buildings permanently attached to the land or parts of such buildings if, under specific regulations, they constitute an object of ownership separate from the land.*

Having into consideration that definition, we can distinguish **land** (a part of the earth's surface constituting a separate object of ownership ), **building properties** (as well as buildings permanently attached to the land) and **premises** (or parts of such buildings if, under specific regulations, they constitute an object of ownership separate from the land).

## PROPERTY LAWS



### 3. Land – regulation

The boundaries of **land property** are marked by lines on the surface established during demarcation: either by agreement between the owners of neighbouring **land**, or in appropriate administrative or court proceedings.

Within the boundaries determined by the socio-economic purpose of the land, ownership of the **land** extends to the space above and below its surface. The determination of these vertical boundaries of land property must be made in the circumstances of the specific case, taking into account the purpose of the property. Mineral deposits may form part of the property, otherwise they are owned by the State Treasury.

## PROPERTY LAWS



## 4. Agricultural land

- **Agricultural land** is land that is or may be used for agricultural production in the field of plant and animal production, including horticulture, fruit growing and fish farming.

- For a property to be classified as **agricultural land**, it is sufficient that it can be used for the indicated activity, i.e. it is a question of potential use, not actual use of the property at a given time.

- Currently, when assessing whether a particular property is agricultural property, its area is irrelevant. Agricultural and forest lands are subject to special protection as defined in the Act of 3 February 1995 on the protection of agricultural and forest land (consolidated text Journal of Laws of 2017, item 1161), while special rules for trading in **agricultural land** are specified in the Act of 14 April 2016 on suspending the sale of real estate from the Agricultural Property Stock of the State Treasury and on amending certain acts (Journal of Laws of 2016, item 585, as amended), which significantly restricts the trading of this type of land.

## PROPERTY LAWS



## 5. Building properties

Building properties are buildings permanently attached to the land, which constitute sometimes the component of the land and sometimes separate property from the land – in this respect, we are dealing with an exception to the *superficies solo cedit* principle.

This principle stipulates, that, 'what is permanently attached to the land shares the legal fate of the land'. Exceptions to this rule are introduced by provisions which stipulate that an item is separate from the land as real estate or movable property. For example:

- a) *buildings* erected on land owned by the State Treasury or local government
- b) *buildings* erected by an agricultural or production cooperative on land owned by the State Treasury
- c) **premises** separated as independent objects of ownership.

## PROPERTY LAWS



## 6. Premises

**Premises**, or **residential properties**, are parts of buildings that constitute separate objects of ownership (also by way of derogation from the *superficies solo cedit principle*).

A residential property cannot exist separately from the land and the building on which it is located. Therefore, the right of separate ownership of premises is always associated with a share in the co-ownership of **building property** and in this respect we are also dealing with compulsory co-ownership.

Pursuant to the Act on Ownership of Premises independent residential premises, as well as premises for other purposes, may constitute separate real estate. An independent residential premises, within the meaning of the aforementioned Act, is a room or a set of rooms separated by permanent walls within a building, intended for permanent human habitation, which, together with auxiliary rooms, serve to satisfy their housing needs or are used for purposes other than residential purposes.

PROPERTY LAWS



**Task:**

*Materials for Students. Lecture no. 3: REAL ESTATE LAW: division for 'things' (movable properties and immovable properties) and 'objects which are not things'*

	things	objects which are not qualified as things
	<i>Immovable property / movable property</i>	
<i>water in bottle in a supermarket</i>	/	
<i>water as energy contained in pipes to houses</i>	/	
<i>water in lake or river</i>	/	
<i>premises like for example appartment</i>	/	
<i>agricultural land</i>	/	
<i>livestock (animals)</i>	/	
<i>machinery, e.g. tractor</i>	/	
<i>car</i>	/	
<i>minerals (e.g. coal not yet extracted from the ground)</i>	/	
<i>coal in a bag sold in a shop</i>	/	
<i>money (banknotes and coins)</i>	/	