

# THE ASSIGNMENT OF SECURED RECEIVABLES IN INTERNATIONAL PRIVATE LAW. THE LAW APPLICABLE TO SECURED RECEIVABLES. GENERAL COMMENTS

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**Summary.** The article presents the rules of determining the law applicable to receivables and their assignment indicating possible links between a claim, its transfer and legal ways of securing a claim. It emphasizes that the law applicable to receivables is determined separately from the law applicable to the assignment of receivables and the legal security of a claim (e.g. a pledge or a surety). In some situations, both laws need to be applied jointly.

**Key words:** transfer of receivables, law applicable to receivables, international private law, Rome I regulation

## 1. GENERAL COMMENTS

The topic discussed here is a claim in the conflict-of-law situation as a right *in rem* which is subject to a security established on the basis of a separate legal act. Prior to the analysis of the law applicable to securing acts in transborder cases including a foreign element, it is necessary to determine the rules for the choice of the law applicable to claims and claim transfer if the transferred claim is secured using one or more legal ways of securing receivables.

It should be emphasized that the law applicable<sup>1</sup> to secured receivables is distinct from the law governing the act of securing, which is a separate legal act. What needs to be discussed is the intermixture of the law applicable to receivables and the status of a securing legal act (a surety or a pledge), the admissibility of a given security method (e.g. the transfer of ownership as a security) and the law regulating it, its accessory nature or the absence thereof, causality or abstractness, and the application of both laws – the one governing receivables and the one governing the securing act – jointly in some situations. The issue that needs to be explored in this context involves joint responsibility and multiple entities.

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<sup>1</sup> Applicable law is the term used in international private law to describe the law governing a conflict-of-law norm (a case or a set of cases) [Pazdan 2009, 49].

## 2. A CLAIM AS A SUBJECT OF SECURITY

Following W. Czachórski [Czachórski, Brzozowski, et al. 1994, 271] it may be assumed that a claim is an obligation owed to the entity entitled to demand its performance (a creditor). A claim involves all the rights that a creditor has with regard to a specific entity – a debtor so that it may demand the performance of an obligation from it. Claims understood as relative property rights may be traded under civil law by way of an assignment. Receivables treated as rights may also be secured in order to reduce the contract risk for the creditor, increase its certainty as regards satisfaction and make it easier for the creditor to pursue its claims.<sup>2</sup>

The assignment of receivables is – also in the conflict-of-law context – an agreement under which a creditor transfers a claim vested in the creditor from its own assets upon a third person [Mojak 1990, 156; Zawada 2014, 1335; Kurowski 2005, 20ff]. As a result, the latter purchases the rights previously vested in the seller. The legal relationship remains the same while the entity entitled to the claim changes. In the case of claims arising from mutual relations, an obligation may involve a structure including multiple entities. The conflict-of-law provisions on the assignment of receivables are applied to securing rights on receivables – a pledge and an assignment to secure a claim (Art. 14, sect. 3 of Rome I).<sup>3</sup>

This article does not look into the assignment of receivables in substantive law as there is an extensive body of literature focusing on this very subject [Liebeskind (n.d.), 1908; Mojak 1990, 157; Zawada 1990, 29; Łętowska 1980, 902; Krzykowski 2012; Mojak and Widło 2017, 551]. Similarly, the notion and transfer of future receivables is discussed in other publications [Kuropatwiński 2007, 53, 134; Zawada 2005, 343; Idem 1992, 17; Grabowski 2000, 565; Widło 2002, 67ff].

Securing rights are, by their very nature, related to secured claims. This relationship may influence conflict-of-law relations and the determination of the law applicable to a secured claim, too. They will be expressed by accessory nature or the absence thereof and, additionally, the causal (*causae cavendi*) or abstract nature of the securing act. Here, it must be noted that in order to determine the law governing a legal security method, one must first define whether security is collateral or personal – creating personal responsibility. In the case of a collateral security, the applicable law will be the relevant articles governing collaterals. If the security is personal and arises under a contract, the relevant articles applicable to the contract, which enable the choice of the law in the first place, will be applied.

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<sup>2</sup> As regards the notion, legal nature, catalogue and the division of securing acts, see Gołaczyński 2002, 162ff.

<sup>3</sup> Rome I Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, O.J. EU L 177/6 [henceforth cited as: Rome I resolution or Rome I].

### 3. ACCESSORY NATURE AND ITS INFLUENCE ON THE DETERMINATION OF THE APPLICABLE LAW

The accessory nature principle ties the securing right with the claim secured by it as regards the creation, scope, contents, transfer, execution and termination of the securing right [Pisuliński 2002, 59].

The existence of the accessory nature indicates that a secured right is linked with and influences a securing right. If there are separate laws applicable to a secured claim and the legal way of securing a claim in a conflict-of-law situation, both the law applicable to the claim and the status of the security may need to be taken into consideration, in particular when the securing act is accessory and causal. This will apply, in particular, to the evaluation of what incidents have an accessory impact on the existence and further lasting or expiry of the security on a claim, hence the existence of the security. What are the premises that must be fulfilled so that both the claim and the right securing it may be transferred upon the buyer? Sometimes, especially in the previous regulatory environment in Poland, the Polish law provisions on the assignment of a mortgage included a rule of mutual dependence between a claim and the mortgage securing it. As a result of it, if the premises of the Act on Land and Mortgage Register were fulfilled and the mortgage was transferred, so was the claim secured by it.<sup>4</sup>

This sometimes means that it is necessary to jointly satisfy the premises of the law applicable to the claim and the law applicable to the securing act in order to achieve the transfer of the secured claim. If there is no option of the choice of law, in order to establish a security and transfer it, the law applicable to the claim must be taken into account. A similar situation arises in the case of a claim transfer (i.e. a mortgage) when the premises of the law applicable to securities must be taken into consideration and satisfied.

This issue will not arise for the security of non-accessory receivables, such as the German land charge (*Grundschuld*),<sup>5</sup> the Swiss land debt, or the designed institution of the Eurohypotec<sup>6</sup> as a non-accessory security. In the above cases, the existence of a claim is independent of the security, although it does not mean that they may not influence each other as regards causality, the analysis of the aim of the acts performed and, e.g., the abuse of a security. In general, the applicable law should be determined independently for the claim and independently for the security. These laws, usually, will not have a direct impact upon each other. It cannot be excluded, however, that the principle of a closer connection between the securing right and the secured right may sometimes arise. In order for that to

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<sup>4</sup> For detailed remarks see Mojak and Widło 1999, 12–20.

<sup>5</sup> For pledge rights and *in rem* securities of a claim in the German law see Baur 1999, 144; Wolf and Raiser 1957, 41; Stoll 1983, 14; Hromadka 1980, 89; Preusner–Zamorska and Traple 1992, 41; Gołaczyński 2002, 87; Leśniak 2004, 25.

<sup>6</sup> For the Eurohypotec, see Kaczorowska 2016, 62; Wudarski 2009, 209; Gniewek 2011, 181–88; Zaradkiewicz 2011, 7.

happen, the premises of both applicable laws must be fulfilled and it is impossible to apply one law to both legal acts.

#### 4. CAUSALITY VS. ABSTRACTNESS

The issue of the causal or abstract nature of incrementing legal acts should be treated in a similar way. Despite numerous publications, a uniform definition of *causa* or the mechanism and effect of causality has not been developed [Drozd 1974, 98]. According to the Polish law and the Polish civil law system, the collapse or absence of *causa* will automatically invalidate a disposition (the right will remain with the entity entitled to it or the right will return to the seller *ipso iure*), hence the system is causal. It is also possible that the collapse of *causa* will not cause the invalidity of a disposition *ipso iure* but it will give rise to a claim to reverse the transfer of ownership on the basis of the regulations on unjust enrichment – according to the concept of limited causality or the abstract nature of incremental legal acts [ibid., 116–17].

In causal systems (France), just like in the Polish law, there is a traditional division into: *causa solvendi*, *causa obligandi vel acquirendi* and *causa donandi* [Wolter, Ignatowicz, and Stefaniuk 1997, 252–53]. Additionally, there is *causa cavendi* – a securing one [Bączyk 1982, 167], which indicates the reason behind and the aim of a given act.<sup>7</sup>

If there is *causae cavendi* in the causal system, the law applicable to the securing act determines whether the security implements *causa* and whether the legal act is causal in its nature. But *causa* itself should be analysed as part of the law applicable to the claim, the circumstances whether the claim exists and whether the securing function can be implemented with respect to the claim (its existence, creation and the aim of the claim security). Even in the case of abstract acts, the legal reason for establishing a security may not be detached from *causa*, but in the case of abstract legal acts the absence or collapse of *causa* does not make it possible to effectively raise the claim of a defective or non-existent securing act or the resultant collapse of *causa*. In practice, a system is abstract if the legislator makes it possible to exclude the possibility of raising a defence that a basic act is non-existent or defective (normative exclusion or exclusion of a defence by way of a legal act – from the legal act that gave rise to the increment).

Individual systems may differ with respect to the effect of an obligating act which, at the same time, has a disposing effect (France, Poland) or they may divide legal acts into two separate stages – an obligation and a disposing act of performing an obligation (Germany). In such a situation, causality and abstractness will be subject to the relevant law governing the claim and the relevant law governing the securing act. In an abstract system, the absence of *causa* will have no influ-

<sup>7</sup> *Causa* denotes a legal aim, the reason for an increment, an economic reason [Bénabent 1989, 75; Tracz 1997, 512; Drozd 1974, 101].

ence upon the arising and transfer of a claim. In a similar way, non-existent or defective *causa* will not automatically make the securing legal act valid and effective. The protection of the seller (creating the law) will be based on the doctrine of unjust enrichment. The evaluation of causality and abstractness of the securing legal act should be discussed separately, in accordance with the provisions of the law applicable to it.

## 5. MULTIPLE ENTITIES IN AN OBLIGATION

The issue of multiple entities in an obligation should also be mentioned. There may be multiple entities on the side of the creditor, the debtor, as well as the claim and the legal way of securing the claim. In principle, what should be determined is the law applicable to a given relationship, not a specific entity or a party to this relationship. Generally, if parties to a suit with a foreign element choose the applicable law (all parties on each side), no problems will arise. Doubts with regard to the applicable law may arise if no choice of law was made or if the norm concerning the place of habitual or permanent residence of a party in the situation of multiple entities needs to be applied. In such a situation, the possibility of absorption and indicating one law applicable to the entire relationship and all entities in the relationship on both sides should be considered. The rule of the closest connection of a specific legal relationship and a particular legal system may be applied here.

## 6. THE LAW APPLICABLE TO RECEIVABLES. THE LAW APPLICABLE TO THE TRANSFER OF RECEIVABLES

Both the Polish conflict-of-law provisions of 1926<sup>8</sup> (international private law and inter-district private law) as well as the Private International Law of 1965<sup>9</sup> did not regulate the law applicable to the assignment of receivables.

When these regulations were in force, the law applicable to the assignment of receivables was determined on the basis of the examination of conflict-of-law ru-

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<sup>8</sup> In the inter-war period in Poland, there were two laws governing conflict-of-law situations arising between the systems of different states – the International Private Law of 2 August 1926 (Journal of Laws No. 101, item 581) and the Inter-District Private Law regulating conflicts of law between different legal systems in force in the area of Poland during its partition – see the Act of 2 September 1926 on the Law applicable to Internal Private Relationships, Journal of Laws No. 101, item 580 as amended [henceforth cited as: the International Private Law of 1926]. These regulations are discussed in Widło 2013, 601–33.

<sup>9</sup> Act of 12 November 1965, the International Private Law, Journal of Laws No. 46, item 290 as amended [henceforth cited as: the International Private Law of 1965]. The law currently in force is the International Private Law of 4 February 2011 (Journal of Laws of 2015, item 1792), which regulates the law governing the effects of a claim transfer for third parties in Art. 36.

les by the judicature<sup>10</sup> and the legal doctrine [Pazdan 2005, 890; Kurowski 2005, 101–102; Fenichel 1928, 72; Drozd 1994, 162; Rycko 2017, 623–34]. As regards the law applicable to the claim transferred and the assignment of receivables, the views are presented below.

According to the first view, the assignment of receivables should be subject to the law applicable to property [Zoll 1947, 61]. It must be remembered that the “seat – location” of a claim was determined by the obligation tying the debtor to the creditor – the law applicable to the relationship which gives rise to the transferred claim (the law applicable to transferred receivables or the law applicable to receivables). From this perspective, the location of receivables is, in fact, identical with the third view, the predominant view as it was rightly qualified by W. Kurowski, that the law applicable to an assignment is the law applicable to the legal obligation whose consequence is the transferred claim. This view was also endorsed by the Supreme Court in its decisions issued when the International Private Law and the Inter-District Private Law of 1926, the International Private Law of 1965 [Przybyłowski 1935, 130]<sup>11</sup> and the Rome convention were in force in Poland [Zachariasiewicz 1983, 70; Kurowski 2005, 101–102, 145–52; Idem 2015, 358–59].

The difference between the two views boils down to the fact that in the first case the law applicable to an assignment was sought among the body of articles applicable to property (the property concept of a claim), while in the second case it was sought among the regulations applicable to obligations. In both cases, the applicable law will follow from the fundamental relationship which gives rise to the assigned claim (the law governing the assigned claim – the relationship between the assignor and the debtor).

According to the second view based on the Private International Law of 1965, the law applicable to an assignment is the law governing the contract that creates the obligation of an assignment (the law applicable to the assignment of receivables – the relationship between the assignor and the assignee) [Pazdan 2001, 157].

At present, this view makes the grounds for the conflict-of-law rule following from Art. 12, sect. 1 of the Rome convention and Art. 14, sect. 1 of Rome I [Kurowski 2015, 359].

It should be mentioned that after Poland joined the Rome convention, from 22 January 2008 to 16 December 2009 (Rome I entered into force on 17 December), Art. 12 of this convention was applied to the assignment of receivables. According to this provision regulating the transfer of receivables: “The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person (‘the debtor’) shall be governed by the law which under this Con-

<sup>10</sup> In particular Pazdan 2005, 889; Kurowski 2015, 358; judgement of the Supreme Court of 20 May 1931, 539/31; judgement of the Supreme Court of 19 December 2003, III CK 80/02; Kurowski 2007, 145–52.

<sup>11</sup> Judgement of the Supreme Court of 20 May 1931 r., 539/31, 15–16; judgement of the Supreme Court of 31 March 1932, 347/32; judgement of the Supreme Court of 19 December 2003.

vention applies to the contract between the assignor and assignee” (Art. 12, sect. 1) and “The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor’s obligations have been discharged” (Art. 12, sect. 2).

Following Rome I currently in force, whose conflict-of-law rules are applied by the Polish legislator to all countries across the world which are not EU member states under Art. 28, sect. 1 of the Private International Law of 2011, the assignment of receivables and a contractual subrogation are regulated by Art. 14 of Rome I. The rules of Rome I have priority over the conflict-of-law regulations of all EU member states except for Denmark where the Rome convention applies. The Rome I regulation has priority over bilateral and multilateral agreements (which should be considered conflicting) concluded between EU member states (Art. 25, sect. 2 of Rome I). If Poland is a party to a bilateral agreement with a non-EU member state, the bilateral agreement applies provided that it naturally regulates the assignment of receivables (Art. 25, sect. 1 of Rome I).<sup>12</sup> The Rome I regulation will also have priority over internal regulations of EU member states in the situations where an internal legislator of a given state decided to regulate the assignment of receivables.

It is also assumed that if there is a conflict between Rome I and an international convention (e.g. the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna on 11 April 1980 or the Convention on the Limitation Period in the International Sale of Goods concluded in New York on 14 June 1974), the UN convention has priority over the resolution. This might be justified by stating that if two or more states-parties are bound by an international convention defining the rights and obligations of the parties with regard to a given aspect, there is no conflict as regards the international aspect that would require the application of the conflict-of-law rules of Rome I or any other conflict-of-law rules.

## 7. UNIFORM LAW – A REMARK

When discussing the assignment of receivables one should not forget to mention such international conventions as the United Nations Convention on the Assignment of Receivables in International Trade signed in 2001 in New York and the UNIDROIT *Convention on International Factoring*. These conventions,

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<sup>12</sup> Art. 25 (Relationship with existing international conventions): 1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations. 2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

which are binding for certain states-parties exclude the application of conflict-of-law rules to the regulations of the conventions, which has been discussed above.

The United Nations Convention on the Assignment of Receivables in International Trade was adopted by resolution 56/81 of the UN General Assembly in 2001, but it did not enter into force. It includes regulations on the assignment of receivables in international trade as well as on the assignment of international receivables and, in a separate section, conflict-of-law rules on the assignment of receivables (conflict-of-law rules are discussed further on).<sup>13</sup> This convention concerns transactions with a foreign element which is international (the debtor and the creditor-assignor or the assignor and the assignee are based in different countries). This convention did not enter into force as it was not ratified by the sufficient number of countries.

The other convention, the UNIDROIT Convention on International Factoring adopted on 28 May 1988 in Ottawa, includes uniform factoring standards.<sup>14</sup> Under Art. 2, sect. 1 B they are also applied by the courts of the countries for which the convention is not binding, including Poland.<sup>15</sup>

As indicated by A. Wowerka, this act does not regulate the assignment of receivables (disposition) in general, but only some aspects of it – excluding the barriers to the assignment of receivables existing in the national law.<sup>16</sup>

One must also refer to model documents concerning the assignment of receivables and the change of a debtor, in particular the Draft Common Frame of Reference (DCFR) [von Bar and Clive 2009],<sup>17</sup> the Principles of European Contract Law (PECL) [Lando and Beale 2000; Zachariasiewicz and Bełdowski 2004, 815; Bełdowski and Kozioł 2006, 860] and the UNIDROIT Principles of International Commercial Contracts (UPICC) of 2004 and 2010.<sup>18</sup>

<sup>13</sup> In the absence of the choice of law, the legal system that reveals the closest connection to the contract should be applied. It was signed by Luxembourg, Madagascar and the US; the Polish translation of the convention was prepared by Kurowski 2004, 1145–193. See also Wowerka 2011b, 660ff. The Polish translation of the convention was prepared by Kurowski 2004, 1145–193.

<sup>14</sup> See <https://fci.nl/en/solutions/literature> [accessed: 9.11.2019]; Wowerka 2005, 139–47; Idem 2009b, 57–85; Zawada 1996, 795; Alexander 1989, 360–63.

<sup>15</sup> The Ottawa convention is currently in force in Italy (since 1995), France (since 1995), Nigeria (since 1995), Germany (since 1998), Hungary (since 1996), Latvia (since 1998), Ukraine (since 2007), Belgium (since 2010) and Russia (since 2015). A list of the states where the Ottawa convention is in force has been published on [www.unidroit.org](http://www.unidroit.org) [Wowerka 2005, 59].

<sup>16</sup> See Wowerka 2005, 58, footnote 3.

<sup>17</sup> Pursuant to the European Parliament resolution of 3 September 2008 (O.J. EU C 295 E/31), the common frame of reference for European contract law is a set of general recommendations (non-binding guidelines) for internal legislators in the development of civil law which should be taken into consideration when designing regulations. This subject is discussed by Lando 2003, 123–33; Weatherill 2004, 633–60; Reich 2006.

<sup>18</sup> The updated UNIDROIT Principles of 2010, Rome 2010, do not change the rules for the assignment of receivables or the change of a party in a contractual obligation; the text with a commentary is available on [www.unidroit.org](http://www.unidroit.org) [Mojak and Widło 2017, 553].



## 8. REGULATION OF THE ASSIGNMENT OF RECEIVABLES. ARTICLE 14 OF ROME I. GENERAL COMMENTS

The law applicable to the assignment of receivables was regulated in Art. 14 of Rome I. This provision includes three paragraphs. Art. 14, sect. 1 of Rome I regulates the law applicable to the assignment in the relationship between an assignor and an assignee (assignment as an obligation and a disposition). Art. 14, sect. 2 of Rome I indicates the law governing the relationship between an assignor and a debtor, i.e. the one which gives rise to the assigned claim (the fundamental relationship), as the one that should be applied to resolve the issue of the claim transferability. Art. 14, sect. 3 of Rome I defines the scope of the assignment of receivables as understood by the conflict-of-law regulations of Rome I. The European legislator decided to divide the law applicable to the assignment of receivables and indicate various conflict-of-law rules depending on the legal relationship following from the assignment of the claim to which the conflict-of-law evaluation applies.

Pursuant to Art. 14, sect. 1 of Rome I (Voluntary assignment and contractual obligation), the relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation. This indicates the law applicable to the contract of assignment [Martiny 2010, 1067; Wowerka 2011, 55a].

The law applicable to the transferred claim determines its transferability, the relationship between the buyer of the claim and the debtor, the grounds for the effectiveness of the assignment or subrogation for the debtor and the releasing effect of the performance by the debtor (Art. 14, sect. 2 of Rome I). Thus, it is the law applicable to receivables [Martiny 2010, 1069; Wowerka 2011a, 56]. The notion of an assignment according to Art. 14 of Rome I includes the unconditional transfer of a claim, the transfer of a claim as a security and the establishment of a pledge or other security on a claim (Art. 14, sect. 3 of Rome I) [Flessner 2009, 36].

As this provision is causal, the question that arises is whether the scope of regulation involves the effects of the assignment for other third persons than the debtor of the claim sold.

In practice, this relationship may concern two issues. The first one is the problem of several creditors competing for a transferred claim. Here, the multiple assignment of the same claim to different entities will be especially important. Third persons might be the assignor's creditors. The Polish legislator decided that Rome I does not regulate the effects of the assignment with regard to third persons, which is why it introduced Art. 36 of the Private International Law which provides that the law of the state that is applicable to the transferred claim determines the effects of the assignment for third persons. Such an approach gives rise

to doubts as third persons to an assignment contract are both the debtors and other entities that are not parties to this contract.

## 9. CONCLUSIONS

On the basis of these regulations, it may be concluded that:

1. The law applicable to the assignment of receivables and the law applicable to receivables (the legal relationship which gives rise to the claim) must be clearly distinct from the law applicable to the way the claim is secured. This means that each law should be determined individually on the basis of separate conflict-of-law rules applied to these autonomous legal relationships. In consequence, it is necessary to seek and determine the law and its application separately for the claim and its assignment and separately for its legal security, which sometimes means that two different legal systems may need to be applied (one for the assignment of receivables and another for the security transfer.) Nevertheless, both laws may be part of one legal system. This may be anticipated when a claim and its legal security are created. It is admissible in particular where the choice of the law is allowed to determine the law applicable to the claim and to the legal act of securing the claim. Where there is no choice of the law for the securing legal act (collateral security as a mortgage) it is possible to select the same law applicable to the claim (its transfer) and the legal way of securing it, which means that both legal acts are subject to one legal system. The law governing the relationship between the assignor and the assignee and, separately, between the debtor and the assignee has been regulated separately as part of the assignment.

2. There may be exceptions to the rule that there are separate laws governing a claim and a securing legal act. Firstly, it may turn out that the law applicable to the assignment of receivables and the law applicable to the securing legal act should be applied jointly to the transfer of receivables and the transfer of a security. It may be a consequence of the way the transfer of a security was construed in the articles of the relevant law that influence the assignment of receivables (e.g. Art. 79 of the Act on Land and Mortgage Registers and Mortgages before and after its amendment referring to the assignment of a claim secured by a mortgage which, along with the assignment of the claim, requires an entry into a land and mortgage register if the claim transferred is secured by a mortgage<sup>19</sup>). Thus, it is the law applicable to the securing act (e.g. mortgage regulations) that determines whether and on what conditions a security transfer and a claim transfer may occur. Secondly, if there is no choice of law or if such a choice is inadmissible, it may turn out that the law applicable to the assignment of receivables and a securi-

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<sup>19</sup> Art. 79, sect. 1. [...] of the Act on Land and Mortgage Registers and Mortgages provides that an entry into a land and mortgage register is necessary to transfer a claim. As indicated by the judgement of the Appeal Court in Białystok of 16 June 2016, I ACa 159/16, Lex no. 2080322, an entry into a land and mortgage register, which is constitutive, is indispensable in order to transfer a claim secured by a mortgage.

ty transfer is the same law because of the application of the closest connection principle (Art. 4, sect. 3 of Rome I). The closest connection in certain circumstances may mean that the securing act is subject to the law applicable to the assignment of receivables or vice versa, the claim is subject to the law applicable to the securing act.

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PRZELEW WIERZYTELNOŚCI ZABEZPIECZONEJ W PRAWIE PRYWATNYM  
MIĘDZYKARODOWYM. PRAWO WŁAŚCIWE DLA WIERZYTELNOŚCI  
ZABEZPIECZONEJ. ZAGADNIENIA OGÓLNE

**Streszczenie.** Artykuł omawia zasady poszukiwania prawa właściwego dla wierzytelności, jej przelewu oraz wskazuje na możliwe związki pomiędzy wierzytelnością i jej przelewem a prawnymi sposobami zabezpieczenia wierzytelności. Wskazuje na zasadę rozdzielnosci wskazywania prawa właściwego dla wierzytelności i jej przelewu oraz prawnego sposobu zabezpieczenia wierzytelności (np. zastawu, poręczenia). Wskazuje na konieczność stosowania niekiedy obu statutów łącznie.

**Słowa kluczowe:** przelew wierzytelności, prawo właściwe dla wierzytelności, prawo prywatne międzynarodowe, rozporządzenie Rzym I

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