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SUMMARY OF DOCTORAL DISSERTATION

**Appurtenant and personal easements on the territory of the former Austrian partition
in the years 1919-1939**

Keywords:

An easement appurtenant, personal easement, court records, Krakow district, 1919 - 1939

The aim of this PhD thesis is to present the role of appurtenant and personal easement on the territory of the former Austrian partition in the years 1919-1939. The conducted research was based on court records of the Krakow district, case law and scientific literature. The present thesis consists of four chapters relating to the definition and types of easements, their possession and lease, as well as the mechanisms of creation, acquisition, expiration and loss of these rights including the system of protection.

The first chapter of this thesis is devoted to the theoretical aspects as well as the definition of the concept of easement, the purpose for which it has been established and the mechanisms of its functioning. It also presents types of easements applicable at that time: rural and urban easements, as well as personal easements. This chapter discusses also the issue of the relationship between the subjects and the objects on which the easements were established, and the benefits that the easements might have brought to those entitled. This part also defines the principle of *servitutibus civiliter utendum est* and identifies legislator's reasons at the stage of determining the law on limited right in rem.

The second part refers to a broad presentation of issues related to the distinction between the right of lease and possession of an easement, taking into account the existing differences. An attempt has been made to define the concept of possession and to indicate who, in what circumstances and when could acquire possession of an easement. This chapter defines also the subject of possession and discusses the technical problem of acquiring possession and the point in time at which it could take place. Furthermore, acquisition of

easement by a deputy was analysed. This chapter distinguishes also the concept of termination of a right and its loss as well as indicates cases in which an easement has terminated.

The third chapter describes the mechanisms of creation, acquisition, expiration and loss of the easement. Particular attention has been paid to division of the sources of easement creation. This chapter specifies primary acquisition, in the form of prescription - along with a detailed description of its prerequisites, and derivative acquisition, through a consensual declaration of will of both parties, a decree of last will, a final court judgment, as well as a decision or ruling of another state authority. Furthermore, other sources for the creation of easements unregulated in the code have been discussed. For that reason the study examines the General Mining Act of 23 May 1854, the Forestry Act of 3 December 1852, the Act of 18 February 1878 on the expropriation of property for the construction and maintenance of railway traffic, the Water Act of 30 May 1869, and the Act of 27 May 1919 on the State Exclusivity of Post, Telegraph and Telephone. The cases where the easement has expired has been analysed, more precisely: forfeiture of the object, unification, renunciation of the right, lapse of time, death of the holder and prescription. This chapter indicates also other selected cases of termination of easements.

The last chapter of this thesis examines the analysis of the easement protection measures, with particular emphasis on the petitive and possessory protection measures, mainly the institution of an affirmative action (in. confessoria) (action confessoria, vindicatio servitutis), which was juxtaposed with the owner's exequatur action, and the easement possession protection measures. The last chapter indicates also possessory remedies, such as the possessory action for deduction of possession and the action for infringement of possession.

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