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Pecking Away at Jan Gwiazdomorski's Theory of Legal Acts amid the Work on the Recodification of Civil Law*

Metodą dziobania o teorii czynności prawnych Jana Gwiazdomorskiego z perspektywy prac nad rekodyfikacją prawa cywilnego

ABSTRACT

The article explores the views of Professor Jan Gwiazdomorski on the theoretical constructs of legal act and declaration of intent, regarded as fundamental categories of private law. The initial section sketches out the influence of Professor's scholarly work on the codification of Polish civil law. In this respect, attention is drawn to Jan Gwiazdomorski's original objectivist concept of declaration of intent and the related theoretical framework of legal act. Later, against the backdrop of the recent dynamism in legislative projects in both substantive and procedural civil law, and taking account of

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Data: 16/11/2026 17:51:56

the breadth of the issues as well as the necessary limits of the article, selected remarks are offered on the impact of Jan Gwiazdomorski's theories on the drafts of the general part of civil law prepared by the Codification Commission in 2008 and 2015.

Keywords: legal act; Jan Gwiazdomorski; codification of civil law

INTRODUCTION

Professor Jan Gwiazdomorski was never an adherent of the view that institutions, concepts, or constructs derived from Roman law and the subsequent transformation of civil law should be regarded as permanent and immutable. On the contrary, he held that, despite their historical grounding and justification, theoretical constructs of civil law must also undergo change, adapting themselves to altered or even fundamentally different socio-economic relations. At the same time, as he emphasised, in discarding existing solutions "one must properly devise new ones; it is necessary to formulate new notions and new constructs – cohesive, devoid of internal contradictions, and capable of providing a clear basis for the drafting of statutory provisions".[1]

The rapid social and economic transformations, coupled with the growing weight of individual autonomy, intensified the need to rethink the classical civil-law constructs of the legal act and the related declaration of intent. A substantial contribution in this regard was made by the scholarship of Jan Gwiazdomorski, who, having identified a significant dissonance in the conceptualisation of legal acts and declarations of intent, subjected these notions to rigorous doctrinal analysis. He presented the conclusions he had drawn directly during the work of the Codification Commission for Civil Law on the provisions of the General Part of the Civil Code, and later, in chronological sequence, in the debates at the First National Integrative Congress of Civil Law Scholars, held in Rzeszów from 28 to 30 September 1972. Ultimately, his reflections were consolidated in a study described as seminal and as a milestone in the evolution of modern approach to the declaration of intent,[2] namely, *Próba korektury pojęcia czynności prawnej* (*An Attempt at Revising the Concept of the Legal Act*).[3]

The discussion concerning such cardinal concepts, both in domestic doctrine and in the international literature of civil law, has nevertheless not yet been brought to a close.[4] The work of the Substantive Civil Law Team of the Codification Com-

[1] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, Protokoły Zespołu Prawa Cywilnego Materialnego, vol. 1, file ref. 2/285/0/21/54/8, fol. 80–81.

[2] A. Jędrzejewska, *Koncepcja oświadczenia woli w prawie cywilnym*, Warszawa 1992, p. 66, 73.

[3] J. Gwiazdomorski, *Próba korektury pojęcia czynności prawnej*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Wynalazczości i Ochrony Własności Intelektualnej" 1973, no. 1, pp. 57–70.

[4] M. Pecyna, *Międzywojenna refleksja o części ogólnej prawa cywilnego i jej doniosłość dla kodeksu cywilnego*, "Państwo i Prawo" 2018, no. 11, p. 57.

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Data: 16/11/2026 17:51:56

mission for Civil Law in 1956,[5] devoted to the regulation of legal acts and declarations of intent, was resumed in the late 1990s within the framework of the new Codification Commission for Civil Law, established with the Ministry of Justice in 1997.[6] As a consequence, the initial stage produced the general assumptions of the future Civil Code,[7] thereafter followed by successive drafts of the General Part in 2008 and 2015. In the years that followed, political shifts led to the dissolution of the Commission in 2015, and the reform of civil law was temporarily put on hold. Recently, however, with the establishment of yet another Codification Commission in 2024, the reform has gained a new and unmistakable momentum, seeking to restore to the Civil Code its proper shape and spirit,[8] including with respect to the instruments by which individual autonomy of will is to be realised.

Against this backdrop, the present study sets out to sketch the influence of Jan Gwiazdomorski's scholarly legacy on the shaping of modern theory of legal acts. As the Professor himself emphasized during the 30 January 1957 meeting of the Civil Law Team of the Codification Commission, in the course of work on the codification of civil law, notwithstanding the legitimate objective of establishing in the Civil Code a common foundation for civil legislation, regrettably, the drafters, in many instances, failed to satisfy this aspiration. Quite to the contrary, in numerous instances, he employed a "specific method of fragmentary regulation, which might figuratively be termed the 'pecking method'."[9] The restricted scope of the present study, together with the considerable breadth and complexity of the subject matter, provide justification for the application of this very method in the course of the ensuing analysis.

JAN GWIAZDOMORSKI'S THEORY OF THE LEGAL ACT AND THE DECLARATION OF INTENT AGAINST THE BACKGROUND OF THE CIVIL LAW CODIFICATION EFFORT

The inception of Jan Gwiazdomorski's scholarly activity occurred during the interwar period, that is, at a time when, following years of the partitioned Polish territories being subjected to foreign legal regimes, efforts were undertaken to achieve

[5] Z. Radwański, *Kodyfikacja prawa cywilnego*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2009, no. 2, p. 132.

[6] F. Zoll, *O polskiej cywilistyce na stulecie polskiej niepodległości, czyli kilka uwag na temat geniuszu mrowiska*, "Państwo i Prawo" 2020, no. 1, p. 14.

[7] Z. Radwański (ed.), *Zielona Księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej*, Warszawa 2006.

[8] W. Kocot, *Plany i kierunki działań Komisji Kodyfikacyjnej Prawa Cywilnego*, "Monitor Prawniczy" 2025, no. 4, pp. 206–209.

[9] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, Protokoły Zespołu Prawa Cywilnego Materialnego, vol. 1, file ref. 2/285/0/21/54/8, fol. 23.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 17:51:56

unification and, in certain instances, to establish an autonomous Polish framework of legal and juridical terminology. The civil-law doctrine of the time, drawing directly or indirectly on Germanic models,[10] adhered to the classical concept of the legal act. Within this framework, the legal act was associated with the declaration of intent, and in some of its aspects – particularly in the assessment of compliance with formal requirements or in the evaluation of validity – the two categories were even regarded as interchangeable.[11] Leading figures in the civil law scholarship of the time expressly maintained that the very core of legal acts – sometimes referred to as acts in law – was nothing other than declarations of intent,[12] so they can be generally regarded as such.[13] Likewise, the legislation then in force, while using the notion of the legal act interchangeably in the statutory vernacular, dispensed with any legal definition of it, confining itself instead to a general characterisation of the declaration of intent.[14] A similar line was pursued in the normative concepts of the post-war period,[15] which upheld the notion of the declaration of intent shaped in the Code of Obligations and, at the same time, reinforced the doctrinal tendency to conflate it with the legal act. An impetus for revisiting the prevailing approach was provided by the introduction into the domestic legal order of a specific statutory definition of the legal act, understood as an act directed towards the establishment, modification, or termination of a legal relationship, producing not only the effects expressed therein but also those arising from statute or custom.[16] Concurrently, a statutory definition of the declaration of intent was adopted. Article 43 of the Introductory Provisions to the Civil Code stipulated that, subject to statutory exceptions, the will of a person undertaking a legal act may be expressed through any conduct of that person that discloses such will in a sufficient manner (declaration of intent). The enacted provisions secured the distinct and autonomous status of the

[10] W. Wydmański, *Niemiecki kodeks cywilny w pracach Komisji Kodyfikacyjnej nad Kodeksem zobowiązań z 1933 r.*, "Miscellanea Historico-Iuridica" 2021, vol. 20(1), p. 36.

[11] Among others, see I. Rosenblüth, [in:] I. Rosenblüth, J. Korzonek, *Kodeks zobowiązań. Komentarz*, Kraków 1936, p. 264 ff.

[12] S. Gołąb, *„Oświadczenie woli" w prawie prywatnym*, [in:] *Encyklopedia podręczna prawa prywatnego: założona przez Henryka Konica*, eds. J. Wasilkowski, F. Zoll, vol. 3, Warszawa 1939, pp. 1334–1336.

[13] R. Longchamps de Bérier, *Zobowiązania*, Lwów 1938, p. 14.

[14] It was incorporated within Chapter I "Declaration of Intent in General", Section I "Declaration of Intent", Title II "Formation of Obligations" of the Regulation of the President of the Republic of Poland of 27 October 1933 – Code of Obligations (Journal of Laws 1933, no. 82, item 598).

[15] Article 10 of the Decree of 12 November 1946 – General Provisions of the Civil Law (Journal of Laws 1946, no. 67, item 369) explicitly stipulated that, in the absence of specific provisions, the regulations of the Code of Obligations concerning declarations of intent were to be applied *mutatis mutandis* to declarations of intent envisaged in other provisions of civil law.

[16] Article 40 of the Act of 18 July 1950 – General Provisions of the Civil Law (Journal of Laws 1950, no. 34, item 311).

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Data: 16/11/2026 17:51:56

legal act as a conceptual category. It suffices to observe that later legislative initiatives in the domain of civil law exhibited a markedly cautious reformist approach, and the changes introduced by the codification of civil law did not, in any respect, undermine the theoretical concept established in this field.[17] Article 56 of the Civil Code,[18] corresponding to the earlier regulations, provides merely that a legal act produces not only the effects expressed therein but also those deriving from statute, from the principles of social coexistence, and from established custom. In the same vein, the definitional structure of the declaration of intent (Article 60 of the Civil Code) was preserved unchanged. Any precise definition of the concept of the legal act, already firmly embedded in statutory terminology, was left to the domain of civil law scholarship and judicial practice.[19]

The deficiencies inherent in the classical concept of the legal act and the declaration of intent became the subject of Jan Gwiazdomorski's scholarly inquiry. Having discerned a certain dissonance in the way these cardinal institutions of civil law were conceived, he went on to propose his own objectivising definitional framework of the legal act and the declaration of intent, for the traditional concept no longer matched the state of scholarship of the time.[20]

As he observed, this concept could scarcely be deemed satisfactory for the very reason that it identified (or at least appeared to identify) two distinct legal concepts: declaration of intent and legal act. The former is, to be sure, a necessary constituent of every legal act, yet it is by no means its sole constituent.[21] In this context, the classical definitions do not so much emphasise as rather obscure the distinctions that emerge between the two concepts.[22]

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[17] See A. Wolter, *Problematyka ogólna czynności prawnych w kodeksie cywilnym*, "Państwo i Prawo" 1964, no. 11, p. 670.

[18] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2025, item 1071, as amended).

[19] A. Szpunar, *Uwagi o pojęciu czynności prawnej*, "Państwo i Prawo" 1974, no. 12, p. 9.

[20] J. Gwiazdomorski, *Próba korektury…*, pp. 57–58.

[21] As Jan Gwiazdomorski elucidated, with the exception of marginal situations in legal transactions where a legal act is constituted by a single declaration of intent, in the majority of cases the factual state giving rise to a legal act encompasses further elements of either a factual or legal character, including, for instance, further declarations of intent made by the parties to a legal act, declarations of intent made not by the parties themselves but by third persons (e.g. Article 248 § 2 of the Civil Code), the production of a particular result in the external world, which may itself possess independent legal significance (as in Article 155 § 2 of the Civil Code), or the requisite cooperation of a state authority, assuming, according to the circumstances, the form of receiving and supervising the correctness of submitted declarations of intent, issuing decisions that determine the effectiveness of a legal act, or effecting entries in the relevant public register. See idem, *Dyskusja*, [in:] *I Ogólnopolski Integracyjny Zjazd Cywilistów, 28–30 września 1972 r.*, ed. M. Sawczuk, Rzeszów 1974, p. 176.

[22] Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, Protokoły Zespołu Prawa Cywilnego Materialnego, vol. 1, file ref. 2/285/0/21/54/8, fol. 101.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 17:51:56

Professor Gwiazdomorski subjected to resolute criticism the classical assumption that the essential attribute of a legal act lies in the intent of the acting person to produce thereby a specific legal effect, and thus the consequent inclination, at times, to identify the declaration (or manifestation) of such intent with the actual legal act. As he stressed, most doctrinal definitions regarded the acting person's intent to bring about legal effects as the *causa efficiens* of the legal act.[23] In this view, a legal act can produce legal consequences only if the person performing it had the intent to produce them[24] – and solely those consequences that were encompassed by that person's intent.[25]

According to Jan Gwiazdomorski, the logic thus adopted could lead to the inference that where the acting person lacks the intent to produce a particular legal effect, no legal act can be said to exist – not only is it invalid but altogether non-existent.[26] It is, however, scarcely tenable to demand that the ordinary participant in social intercourse, frequently devoid of even minimal legal consciousness, should, in the course of daily transactions, invariably harbour a genuine intent (and often even awareness) of producing (all) corresponding legal effects. Referring to the socio-economic function of the legal act, Professor Gwiazdomorski rightly assumed that such a person does indeed have, and express, the intent to achieve a particular socio-economic outcome, whereas the fact that legal effects arise from that conduct is something they do not consider or may even be entirely unaware of.[27]

In the Professor's view, the claim that the legal consequences of a legal act are limited solely to those effects embraced by the intent of the performing party may not be accepted. The normative framework itself – most notably Article 56 of the Civil Code – points to, in addition to the content of the actual act, statute, the principles of social coexistence, and established custom as sources of legal effects. Moreover, mandatory rules, which prevail over the provisions of legal acts, frequently determine their effects in ways that at least partly diverge from, or even directly contradict, the parties' intent.[28]

The paramount argument for Jan Gwiazdomorski against perceiving the intent to produce legal effects as a constitutive element of the legal act, as well as against the assertion that a legal act may generate solely those legal effects encompassed by the performing party's intent, was the absence of any foundation for such views in the applicable legal regulations. By referring to the Civil Code provisions on incapacity to perform legal acts (Articles 11–14) and on defects in declarations of intent (Articles 82–88), he demonstrated that the legislator – whether in cases where there

[23] J. Gwiazdomorski, *Dyskusja…*, pp. 173–174.
[24] Idem, *Próba korektury…*, p. 59.
[25] Idem, *Dyskusja…*, p. 174.
[26] Idem, *Próba korektury…*, p. 59.
[27] Idem, *Dyskusja…*, p. 174.
[28] Idem, *Próba korektury…*, p. 60.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 17:51:56

was in fact no intent to produce legal effects on the part of the party, or even where such intent existed but the legal effect of the act proved partly or entirely different from what had been envisaged – still ascribed legal significance to the act in a variety of ways.[29] At times the legislator declares such an act in law to be absolutely void (Article 14 § 1 and Article 82 of the Civil Code), at other times it attaches the sanction of relative nullity (Articles 84 and 87), and in yet other instances it recognises the act as valid and effective (Article 83 § 2). It never, however, classifies it as a non-existent legal act.[30] In extreme cases, moreover, even conduct undertaken with the intent to produce legal effects may fail to constitute a legal act.[31]

The response to the dilemmas identified lay in Professor Gwiazdomorski's revision of the concept of the declaration of intent and the subsequent reconfiguration of the definition of the legal act. The subjective approach to the declaration of intent, which focused on the intent of the acting person as the source of a particular legal effect, was to be supplanted by a strictly objective approach. According to Gwiazdomorski, the declaration of intent is to be construed as "any conduct of a person (not 'undertaken with the intent of producing a specific legal effect'), but from which there results – having regard to the attendant circumstances, the principles of social coexistence, and established custom – the intent to manifest a determination to produce a specific legal consequence".[32] Accordingly, legal significance attaches not to the declarant's internal intent to achieve legal consequences, but rather to the manner in which such conduct is manifested on the outside, whether to the addressee of the declaration or to their milieu.[33]

The consequence of this was the necessity of redefining the notion of the legal act, which, in Professor Gwiazdomorski's novel approach, is a factual state encompassing at least one declaration of intent, which objective law recognises as both the cause and the means of producing such legal effects as objective law deems intended by the person undertaking the act.[34] Such an objectivised construction of the definition is to be considered non-standard, as its sense can be fully apprehended only with an appreciation of the Professor's broader argumentation and only in conjunction with the definition of the declaration of intent as its intermediary content.[35]

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[29] *Ibidem*, p. 65.

[30] Idem, *Dyskusja…*, p. 174.

[31] As Professor Gwiazdomorski emphasised, anybody performing a legal act must employ it for the purpose for which it has been designated within the legal regime. Otherwise, even a thief committing theft solely in order to secure their confinement in prison for the winter season would have to be regarded as performing a legal act. See Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, Protokoły Zespołu Prawa Cywilnego Materialnego, vol. 1, file ref. 2/285/0/21/54/8, fol. 107.

[32] J. Gwiazdomorski, *Próba korektury…*, pp. 65–66.

[33] Idem, *Dyskusja…*, p. 175.

[34] Idem, *Próba korektury…*, p. 66.

[35] Idem, *Dyskusja…*, p. 176.

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Data: 16/11/2026 17:51:56

THE CONTEXT OF THE RECODIFICATION OF CIVIL LAW

Since the close of the 20th century, Europe has witnessed a wave of civil law reforms. A number of countries have since either carried out, or engaged in intense debates over, far-reaching reforms of various branches of civil law.[36] This trend has not spared Poland. Alongside the ongoing de-codification of private law,[37] the past two decades have seen a marked increase in work on a new civil law codification, culminating in the presentation of two successive drafts of the Book One of the Civil Code, prepared by the Codification Commission for Civil Law.[38] These regulatory works, inspired by the pandectist system, naturally extended to the domain of legal acts as well.

As noted in the explanatory memorandum to the 2008 draft, the proposed provisions on legal acts largely continued the Polish civil law tradition dating back to the Code of Obligations. The key provision – Article 78 of the draft, placed in Title IV "Legal Acts", Division I "General Provisions" – mirrors that in Article 56 of the Civil Code. Its § 1 reads that a legal act produces not only the legal effects specified in the declaration of intent, in statute, and arising from custom, but also those supported by reasonableness and equity. Its functional and structural nexus with the declaration of intent was consistently reflected through the definition, placed already in § 2 (and not, as hitherto, in the remote Article 60 of the Civil Code), of the declaration of intent itself, construed as any conduct of a person whereby that person manifests the intent to produce legal effects, in particular the creation, alteration, or extinction of a legal relationship.[39] The principles of social coexistence, regarded as a relic of a bygone era, were, notwithstanding a serious attempt at their redefinition,[40] supplanted – after the Dutch model – by a new general clause rested on considerations of reasonableness and equity.[41]

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[36] R. Schulze, *Changes in the Law of Obligations in Europe*, [in:] *The Law of Obligations in Europe: A New Wave of Codifications*, eds. R. Schulze, F. Zoll, Berlin–Boston 2013, p. 3.

[37] F. Longchamps de Bérier (ed.), *Dekodyfikacja prawa prywatnego w europejskiej tradycji prawnej*, Kraków 2019; J. Rudnicki, *Dekodyfikacja prawa cywilnego w Polsce*, Bielsko-Biała 2018.

[38] Komisja Kodyfikacyjna Prawa Cywilnego przy Ministrze Sprawiedliwości, *Księga pierwsza Kodeksu cywilnego. Projekt z uzasadnieniem*, Warszawa 2009; P. Machnikowski (ed.), *Kodeks cywilny Księga Pierwsza. Część ogólna. Projekt Komisji Kodyfikacyjnej Prawa Cywilnego przyjęty w 2015 r. z komentarzem członków zespołu problemowego KKPC*, Warszawa 2017.

[39] The phrase "subject to exceptions provided by statute" was omitted, as it had occasionally been misinterpreted not as pertaining to the form of the declaration but as an element of the definitional structure of the declaration of intent. Similarly, the reference to the permissibility of an electronic form of the declaration of intent must be regarded as redundant under contemporary circumstances. See Komisja Kodyfikacyjna Prawa Cywilnego przy Ministrze Sprawiedliwości, *op. cit.*, p. 91.

[40] A. Doliwa, *Przeszłość i przyszłość klauzuli generalnej zasad współżycia społecznego w polskim prawie cywilnym*, "Miscellanea Historico-Iuridica" 2024, vol. 23(2), pp. 443–468.

[41] For more, see E. Rott-Pietrzyk, *Holenderska klauzula rozsądku i słuszności na tle innych uregulowań prawnych (wzór dla polskiego ustawodawcy?)*, "Studia Prawa Prywatnego" 2006, no. 3, pp. 57–101; eadem, *Klauzula generalna rozsądku w prawie prywatnym*, Warszawa 2007.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 17:51:56

The draft did not produce the effects anticipated within the legal community, and in particular it failed to stimulate a thoroughgoing discussion capable of advancing civil law scholarship.[42] On the contrary, it elicited predominantly negative reactions, especially among members of the judiciary, whose views significantly affected the formulation of the second draft of 2015.[43] From the perspective of Jan Gwiazdomorski's scholarly interests, particular importance must be attached to the proposed provisions of Articles 52 and 53 of that draft. As the drafters themselves stressed, the changes in wording were merely editorial and clarifying in nature, without affecting the substance of the regulation. Nor did any essential changes occur in relation to the very concept of the declaration of intent adopted in the binding codification; it was simply expressed with greater precision. The draft consistently posits that the essence of a declaration of intent is any conduct of a person that expresses their determination to bring about legal effects (Article 52 § 1 of the 2015 draft). The draft abandoned the illustrative listing of legal effects resulting from a declaration of intent, on the grounds that such enumeration carried no normative weight.[44] Far more significant is § 2, which provides that the absence of intent to produce legal effects does not exclude such effects where a person's conduct has been reasonably understood by another as directed toward them as a declaration of intent. Complementing the definitional construction of the declaration of intent, this provision accentuates the objective approach to this event in civil law.[45] Furthermore, the absence of intent to produce legal effects by all parties to a legal act cannot be raised against a third party who reasonably regarded the act as having been effected (§ 3).

The very conceptual framework adopted in the draft – sound in principle, inasmuch as it allows for the extension of the regulations governing legal acts and declarations of intent to other forms of declarations increasingly used in

[42] F. Zoll, *O polskiej cywilistyce…*, p. 14.

[43] Doubts were voiced as to the appropriateness of enumerating in Article 78 § 1 of the draft the legal effects of acts in law, a task more properly reserved for legal doctrine than for the legislature. Equally questionable was the attribution of legal significance to all customs, rather than solely to the established ones. See *Projekt kodeksu cywilnego księga pierwsza. Sprawozdanie z dyskusji przeprowadzonej w Izbie Cywilnej Sądu Najwyższego*, "Przegląd Sądowy" 2010, no. 2, pp. 115–116.

[44] The French legislator took a different course. In the spirit of reform, under Article 2 of Order no. 2016-131 of 10 February 2016 on the reform of contract law, the general regime, and the proof of obligations (JORF no. 0035, 11 February 2016), it set out in Article 1101 of the French Civil Code that a contract is an agreement between two or more persons intended to create, alter, transfer, or extinguish an obligation.

[45] P. Machnikowski, *Przepisy ogólne*, [in:] *Kodeks cywilny Księga pierwsza…*, pp. 72–73. The employment of the concept of the declaration of intent, rather than that of the legal act, as an exemplar of a civil-law occurrence obscures the already tenuous and difficult-to-discern boundary separating these two concepts – a boundary with which Jan Gwiazdomorski apparently grappled.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 17:51:56

practice with the advance of technology and the changing needs of transactions[46] – nevertheless, to put it mildly, encroaches upon the conceptual canons long established in the doctrine. Instead of the prior Title IV "Legal Acts", with Chapter III "Form of Legal Acts", the drafters placed together in Title III "Declarations and Legal Acts". Yet already Division V covers "Forms of Declarations", rather than "Forms of Legal Acts", an expression established in both legal and juridical terminology. The sequence of concepts employed in the designation of this title could be taken to imply that declarations constitute a more general category than legal acts. In reality, however, the principal instrument for the realisation of autonomy of intent, and the object of regulation herein, is the legal act, to which the regulatory declarations of intent are subordinate components, followed only thereafter by other declarations of narrower ambit, performing an informational function.

According to the assumptions of the draft, the existence of a declaration of intent requires conduct by a person that reveals their intent to produce legal effects. What matters here is not only the person's actual (psychological) determination to achieve such an effect, but, if that is lacking, also how the person's conduct was perceived by the addressee. If a person's conduct – even without their actual intent or awareness – has been taken as a declaration of intent, and if the context of that conduct along with the semantic conventions usually applied to such behaviour render this understanding reasonable, then the legal system will attribute to it legal significance as a declaration of intent. This express recognition of conduct from which the intent to manifest a determination to produce a particular legal effect may be inferred represents an embodiment of the renewed objectivisation of concepts, in line with Jan Gwiazdomorski's prescriptions. Understandably, however, it may still be subject to criticism from proponents of the semiotic concept of the declaration of intent.[47] Recourse to considerations of reason, consistent with the initial intention of the

[46] M. Grochowski, *Uwagi o systemowym znaczeniu art. 60 k.c.*, [in:] *Aurea praxis, aurea theoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, eds. J. Gudowski, K. Weitz, vol. 2, Warszawa 2011, pp. 2301–2321, footnote 86.

[47] Particularly, insofar as the definition of the declaration of intent employs the very concept of intent. The very necessity of incorporating a codified definition of this concept calls for reflection (as expressly underlined by Jan Gwiazdomorski, see Archiwum Akt Nowych, Ministerstwo Sprawiedliwości, Komisja Kodyfikacyjna, Protokoły Zespołu Prawa Cywilnego Materialnego, vol. 1, file ref. 2/285/0/21/54/8, fol. 100–101), as the proposed provision does not resolve the fundamental issue of whether it is necessary for the declarant to express intent, or whether it suffices that the content of the declaration indicates that it expresses the intent of the subject, irrespective of whether such intent was genuinely harboured by them. See Z. Radwański, K. Mularski, *Semiotyczna charakterystyka oświadczenia woli*, [in:] *System Prawa Prywatnego*, vol. 2: *Prawo cywilne – część ogólna*, eds. Z. Radwański, A. Olejniczak, Warszawa 2019, pp. 27–29.

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Data: 16/11/2026 17:51:56

members of the Codification Commission,[48] derives direct inspiration from the Dutch Civil Code (Burgerlijk Wetboek).[49]

A final expression of the drafters' objectivising tendency – entirely in line with the views of Jan Gwiazdomorski – is the extension of legal protection to third persons in cases where all the participants in an occurrence outwardly bearing the features of a legal act had, in fact, no intent to produce legal effects, yet their conduct gave rise in third persons to a reasonable belief that they were confronted with a legal act (Article 52 § 3 of the draft). As a substitute for the former rules on apparent (sham) legal acts, the provision in effect protects anyone who, on the basis of another's conduct, derives any legal effects from the supposed performance of a legal act, provided that their belief in its occurrence is, in light of the circumstances, deemed reasonable. In such an instance, it is precluded to invoke the absence of an actual legal act.[50]

The 2015 draft, however, departs from the views advanced by Jan Gwiazdomorski as to how the legal effects of a legal act are to be identified. Article 53 § 1 of the draft provides for the supplementation of the content of a legal act by reference to statute, custom, and considerations of reasonableness and equity, yet subject to the condition that this applies solely to those effects which the parties themselves would have attached to their act. The drafter thus modifies the regulatory method to the extent of shifting the focus from a purely abstract and objective axiological and normative matrix to the individual and subjective evaluations and aims of the parties.[51] As the doctrine has perceptively noted, this may be read as an attempt to shift the balance established under Article 56 of the Civil Code and to exclude, in clear terms, any expansion of a legal relationship by elements grounded in public interests or values that might conflict with the parties' individually conceived intent.[52] To that extent, it would mark a departure from the objectivising tendency advocated by Jan Gwiazdomorski.

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[48] Komisja Kodyfikacyjna Prawa Cywilnego przy Ministrze Sprawiedliwości, *op. cit.*, p. 7.

[49] It is a point of reference for a number of European codifications. See G. Meijer, S.Y.T. Meijer, *Influence of the Code Civil in the Netherlands*, "European Journal of Law and Economics" 2002, vol. 14, p. 227 ff. Article 3:33 of the Dutch Civil Code stipulates the requirements of a legal act: it requires intent directed towards a legal consequence and expressed in a declaration. Furthermore, Article 3:35 attributes significance to trust engendered in the addressee of a declaration, which, pursuant to Article 3:11, is to be construed as good faith. See judgment of the Netherlands Supreme Court of 12 October 2012, 11/03049, ECLI:NL:HR:2012:BW9243.

[50] P. Machnikowski, *op. cit.*, pp. 74–75.

[51] *Ibidem*, pp. 76–77.

[52] M. Grochowski, *Komentarz do art. 56*, [in:] *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC. Komentarz*, ed. P. Machnikowski, Legalis 2022, margin number 12.

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Data: 16/11/2026 17:51:56

CONCLUSIONS

The foregoing reflections outline Jan Gwiazdomorski's contribution to the development of the Polish theory of legal acts and declarations of intent. His incisive critique of the classical concept of the legal act – which at times allowed the act to be conflated with the declaration of intent – marked a turning point in shaping the objective tendency in the understanding of these concepts. Notwithstanding the passage of years and the development of divergent concepts and approaches, the formula advanced by Professor Gwiazdomorski has endured, as a kind of panacea, as an important guidepost for addressing fundamental definitional problems, and continues to be manifest in the pursuits of successive drafts issued in the course of work of the Codification Commission for Civil Law.

Yet it must be borne in mind that every codification or recodification effort faces the serious challenge of ensuring the vitality of the rules it produces. Each codification must be sufficiently novel – indeed, sufficiently open – so as not to forfeit its significance prematurely. As has been aptly observed in the literature, this objective is exceedingly difficult to realise, for owing to the inherent specificity of codification, it is invariably only moderately innovative and, simultaneously, moderately conservative.[53] In this light, Jan Gwiazdomorski's concluding observation proves all the more apposite: "The deeper we reach, and the closer we endeavour to approach the basic concepts, the more uncertain, doubtful, and disputed everything appears".[54]

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[53] F. Zoll, *Contract Law in the Draft of the New Polish Civil Code: Formation of Contract, Performance and Non-Performance of Obligations*, [in:] *The Law of Obligations in Europe…*, p. 93.

[54] J. Gwiazdomorski, *Dyskusja…*, p. 46.

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ABSTRAKT

Przedmiotem rozważań są poglądy Profesora Jana Gwiazdomorskiego dotyczące teoretycznych koncepcji czynności prawnej i oświadczenia woli jako podstawowych pojęć z zakresu prawa prywatnego. W początkowej części zarysowano wpływ aktywności badawczej Profesora na kodyfikację polskiego prawa cywilnego. W tym zakresie wskazano na autorską, obiektywizującą koncepcję oświadczenia woli, jak również na powiązaną z nią teoretyczną konstrukcję czynności prawnej Jana Gwiazdomorskiego. Na dalszym etapie rozważań, w związku z widoczną w ostatnim czasie dynamiką projektowanych zmian prawodawczych z zakresu prawa cywilnego materialnego i procesowego, uwzględniając przy tym rozległość problematyki i jednocześnie ograniczone ramy pracy, zaprezentowane zostały wybrane uwagi dotyczące wpływu wspomnianych teorii Jana Gwiazdomorskiego na kształtowanie przygotowanych przez Komisję Kodyfikacyjną projektów regulacji części ogólnej prawa cywilnego z lat 2008 i 2015.

Słowa kluczowe: czynność prawna; Jan Gwiazdomorski; kodyfikacja prawa cywilnego