MÁRTON SCHULTZ

ELEMÉR BALÁS P.*

(1883–1947)

I. Biography

As the life and academic work of Elemér Balás P. (full name: Elemér Balás Piri) has already been examined by several authors, I will begin with a brief overview of this topic.[1]

Elemér Balás P. was born in Szabadka (Subotica) on the 28th of January, 1883. He died on the 17th of December, 1947. He received his law degree in 1905, in Kolozsvár (Kolozsvár). He was active as a legal scholar in three great fields of law. Regarding his educational activities, it is notable that he acquired habilitation in criminal law in 1943, in Szeged. Between 1937 and 1940, he was head of department in Szeged, and then was professor of Hungarian civil and criminal law (both judicial and substantive) in Kolozsvár for his remaining years. However, it is notable that Hungarian law was not yet in full effect in Northern Transylvania. Between 1945 and 1947, he was head of the department in Szeged.

He began his judicial career in Makó as a trainee judge, before moving onto Szeged as a trainee judge at the local regional court. This was followed by his activities as a deputy prosecutor and then full prosecutor in Nagykikinda. At the peak of his career, he became a judge of the royal Supreme Court.

Regarding his academic work, it is notable that he held his academic inauguration speech with the title of *Perception of litigation and criminal policy* in 1943.[2] He was an invited member of the Hungarian Academy of Sciences from 1937, and later, an ordinary member.

He was a leading member of several associations, committees and boards. He was the chairman of the Copyright Expert Committee, a member of the Medical Examiner Committee of the Regional Court, the co-president of the Industrial Property Law Association, the vice-president of the Press Law Society and the Social Sciences Association.

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1 NIZSALOVSZKY 1948, 151. RÁCZ 1983, 412–413. PÓLAY 1984, 84–86. ZVOLENSZKI 1998, 174–175. JUHÁSZNÉ ZVOLENSZKI 2018. 837–840.

2 See also: *MTA tagajánlások* 1943 [Hungarian Academy of Sciences Membership Recommendations 1943]. MTA, Budapest, 1943. 18–19.

II. Academic work

Although Elemér Balás P. worked both in the field of criminal and private law, it is possible to describe two great directions that determined his academic work. One of these were the legal questions relating to the new challenges of science and technology. The other was the legal manifestation, and assessment, of the societal perspective founded on the social sciences-based human-property duality concept. I will highlight both of his theories in these two areas during the examination of his work, as well as focus on his most important theories from a personal and property perspective on specific legal fields.

For the 70th anniversary of *Elemér Balás P.'* death, a memorial book was created, with *András Koltay* as the editor. I will also note the most important observations of the book's authors (*Klára Gellén, Zsolt Konkoly, András Koltay, Péter Mezei, Tamás Nótári, Magdolna Vallasek, Emőd Veress)*.

Alexander Elster and trialism

In order to understand the property and personal perspective of *Elemér Balás P.*, we must know which academic currents affected his thinking. Unfortunately, the books read by *Elemér Balás P.* in Kolozsvár are mostly lost. This is due to the moving of the faculty from Kolozsvár to Szeged during a time of war, and so only a portion of the books arrived at the new university, the rest disappeared or were destroyed. The books were first transported by train to Budapest, and then only from there to Szeged.

Alexander Elster was a devotee of the trialist approach to intellectual property. His textbook was cited several times by *Elemér Balás*.[3] According to *Elster,* intellectual properties do not constitute a single whole, but neither consist of parallel personal and property relations, but rather that competition law appears in them as a third element. As such, he believed that industrial property rights had three elements: (1) there must be an intellectual property, which (2) is capable of existing in a marketable form, and which (3) is capable of participating in industrial competition.[4] This Elsterian thought posited that in order to have characteristics of property law, the property must also be competition-capable.[5] And it will be competition law that separates the personal and property rights aspects.[6] As such, he posited that it was more logical to speak of trialism, instead of dualism, within this context.[7]

Balás did not fully adopt this trialist perspective, but it can be observed that competition law occasionally intrudes into his works on statutory/regulatory law and dynamic property law, with regards to the personal-property relationship. However, he did not assign the same importance to it as *Elster*, he conceptualized its place in the legal system and its effect on intellectual property differently.

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[3] ELSTER 1928.
[4] ELSTER 1928, 6.
[5] ELSTER 1928, 51.
[6] ELSTER 1928, 24.
[7] ELSTER 1928, 25.

The social academic basis of personal and property perspectives

The static and dynamic perspective on property, as well as the personal perspective, are constant elements in *Balás'* work. In any given study of his, he first analyzes the topic from a general, historical perspective, before he specifies it into the given legal fields. These experiences constitute his theory (synthesize in its application to competition law) that he described in 1940, in his study, titled "*Dynamic property perspective in private law. The fundamental problem of competition law."* He expounded upon three terms here: (1) the personal perspective, (2) the static property perspective and (3) the dynamic property perspective. According to Balás, the personal and property societal perspective's essence is, in general, the human relation to the environment. "*This relationship develops differently in different eras. This is based on how much the so-called environment stands between man and man, and on the other hand, it depends on what is considered the environment by man in the different eras: does he include other men into it, or only the environment in its strictest sense with only non-personal elements included."*[8] The ancient era was defined by staticity.[9] Staticity "*attempts to ensure the constancy of human will, and its predominance, and through this, amplify the order of things and their stability in a direction in accordance with the needs of society."*[10] This mostly manifests in the field of property law in modern legal systems, as they determine the fundamental order and rules of property relationships in society.

He placed great importance on Christian philosophy, which he highlighted even during his examination of statutory/regulatory law in relation to personal rights. "*Personhood independent of the outside world is a Christian concept, it was unknown before Christianity. […] The man surrounded by Christian thought then uses the idea of infinity on property as well, the person-less objects of the outside world, and thus believes them to be capable of infinite effort. This is even beyond their natural attributes, as under the influence of man, they gain a new kind of mobility, due to the brand of human intellect and personality being upon them. And so, property becomes more personified, such as technical and intellectual properties, which, to some extent, rise above the objects of the outside world and enter the higher regions of personhood.*"[11]

Criminal Law

Balás' research in the field of criminal law is also chronological, and thus historical-comparative as well. He emphasizes in relation to Roman law that its criminal law was based on staticity, much like its private law, but it had no great effect on the criminal law of the modern age. *Balás* considered this static perspective to be the reason for the small significance of Roman criminal law, and the fact that greater attention was paid to private law (through *iniuria* cases).[12] According to Balás, "*unlike Roman law, medieval law*

[8] BALÁS 2018, 488–489.
[9] BALÁS 1938, 16.
[10] BALÁS 1940, 9.
[11] BALÁS 1941, 626–627.
[12] BALÁS 1942, 16.

emphasized the personal perspective, and criminal law was also heavily personalized. Punishments were mostly symbolic, mirroring the crimes. […] *It was not important that there would be a balancing of scales, based on amount or weight, between crime and punishment. Rather, the purpose of punishment was to express that the perpetrator committed a crime, and thus scare other members of society away from committing similar crimes, and to show how someone committing such and such crimes will end up. This greatly symbolic, mirroring manner of punishment is undoubtedly founded upon a personal perspective."*[13] This does not mean, however, that the element of property did not appear. But this was not in the context of the relationship between crime and punishment, but appeared in connection with the perpetrator. According to *Balás,* the use of the perpetrator for various cruelties rendered him akin to a property or object.[14]

Press law

In relation to press law, *Balás* explained his theory in his work titled "*Radio, copyright, press law".* This theory was mostly tested by him in areas where the radio met with copyright. *Balás* criticized the German legal literature on the subject, he opposed the Kammergericht's[15] view that multiplication only applies to physical objects. [16] He expounded upon the relationship between copyright and press law, their legal construction. According to Balás, the two legal fields "*are very close to each other, but are not the same. They are close to each other, because the object of both is intellectual content expressed outwardly and understandable for others. Until the intellectual content manifesting in the human spiritual life does not reach expression, there is no copyright or press law issue to talk of. In order for either of these legal fields to have actual relevance, signs must come into being in the outside world, signs that make it possible for other individuals to understand the intellectual content.*"[17] From this, it can be observed that with regards to their character, both legal fields are influenced by the personal perspective. This becomes apparent to third persons through its relationship with the physical world, and from which originates its utility, utility that can be regulated by law. However, press law does not retain its purely ideal character, as it primarily serves the interests of the economy and market. The property dynamicity intrudes into the regulation at several points, on matters such as liability, legal protection and impinging. *Balás* points out that "*press law and copyright both take into account the objectification of intellectual content, not the inner, non-expressed aspects of spiritual life.* [...] *In press law, the objective view is found in the special regulatory method of media liability. In places with separate media liability, it is always the case that in essence, they are not making the individual liable for what they wrote, but rather look for who is liable for what is published by the press.*"[18]

[13] BALÁS 1942, 17.
[14] BALÁS 1942, 17.
[15] The Kammergericht is a court of appeal in Berlin, which unlike other similar courts, is not named Landgericht, following Prussian traditions.
[16] BALÁS 2018, 214.
[17] BALÁS 2018, 221.
[18] BALÁS 2018, 223.

Balás contrasted the phonograph with the radio, from the perspective that while in the case of the former, the expressed content physically manifests, is recorded in a permanent manner in a physical object, a disc, this is not the case with radio.[19] We can observe similar divergences with relation to cinematography. "*The cinematograph is one of those devices that express thought in such a manner, that the signs expressing it are recorded with a kind of permanency on a physical object, the film, and distribution thus involves the film being produced in multiple copies, and is transmitted to third persons through specific devices, not through direct human senses* […]*"*[20] It can be observed that regulations which are connected to personal and property perspectives were compared with each other through contrasting the radio and other forms of expression.

András Koltay conclusively remarked that the connection with the whole of press law, that "the work of Elemér Balás P. is unsurpassed to this day in several respects. The author was a multifaceted genius, who was not only active in several different legal fields, but was at the same time a dedicated researcher and a practical expert, whose contribution to academics did not end with his research on the theoretical foundations of press freedom and regulation." [21] *Vallasek Magdolna* examined the author's stance with regards to press freedom and censure. She pointed out that *Balás Elemér* does not oppose the view that "in certain circumstances, censure is a legitimate or at least acceptable tool of the state. [...] Elemér Balás P. does not deal in detail with the question "to which extent is censure a legitimate restriction on freedom of speech."[22] *Klára Gellén* emphasized the following in relation to the right to press correction: "Elemér Balás P. was ahead of his time in seeing the full reality and complexity of press activity, its character and function, the objective behind the institution of press correction, and the factors restricting press activity."[23] *Vallasek* reached similar conclusions*:* "Elemér Balás P. is one of the first jurists dealing with press law who examined the regulation of new media, such as the radio."[24] *Koltay* also recognized the importance of the property-esque character of the press in the life work of *Elemér Balás P.*, and called it a "magisterial work."[25] Finally, he emphasizes that "which Balás P. wrote, is applicable to internet communication just as much as it was to the press of his own time."[26]

Copyright

When it comes to copyright, the personal and property perspective appears in two ways: on the one hand, through copyright's development as one or the other perspective gained prominence, and on the other hand, through the assessment of current law.

[19] BALÁS 2018, 232.
[20] BALÁS 2018, 227.
[21] KOLTAY 2018, 136.
[22] VALLASEK 2018, 100.
[23] GELLÉN 2018, 17.
[24] VALLASEK 2018, 95.
[25] KOLTAY 2018, 147.
[26] KOLTAY 2018, 154.

In the *Copyright and property dynamism* study found in the Szladits memorial book, *Balás* examines the property perspective and its dynamism in relation to works created through intellectual activity, beginning with Roman law. With regards to Roman Law, he accepts the position of *Kohler* and *Elster*, and emphasizes that "*the Romans did not know the importance of intellectual property, neither as an object or a subject of law. But consciously accepting the importance of intellectual property is the conditio sine qua non of regulation directed towards copyright protection."*[27] As such, in the Roman era, works were only considered properties, their creative aspect was not legally assessed, this had to wait until the invention of printing.[28] The work always carries the creator's, the author's, personality, the assessment of this being the personal perspective. According to *Balás, "we can only speak about a work where rules do not provide the content of the activity, but rather the person must fashion this content according to their personality."*[29]

After the advent of printing, the personal opinion, the recognition of the author also appeared, though only in a basic manner. *Balás* considered this a process of development, in which the personal perspective gained ever greater importance. He pointed out that authors were at first anonymous and thus without personhood. This was followed by the process of individualization, as shown by the author's name being noted on works.[30] The invention of printing led to a degree of depersonalization between the author and his work. In a similar fashion, the audience was gradually distancing themselves from the author. *Balás* concluded his assessment of the dynamic property perspective on copyright as follows: "*in copyright, the property does not appear due to its own natural attributes (and the consumption capability following from these), but rather only in its capacity as the carrier of an intellectual property. Or alternatively, as an expression of some kind of meaning that is completely alien to the natural character of the property, but as a result of this special meaning, the property is viewed as holding special importance from a legal and economic perspective (independently of its natural character), capable of effecting independent mobility in the market that would not be possible without it expressing this special meaning, if it did not carry an intellectual property. Even in copyright, property appears as an independent, personified, dynamic element.*"[31] In the end, he reached the opinion that without the development of property dynamism, copyright would have not appeared at all.[32]

Copyright preceding the Second World War was characterized by dualism. The two copyright-related laws in effect until then did not address the question of personality rights, instead, those were made into law by the consistent practice of the royal Supreme Court[33], with regards to the Roman Convention.[34] *Elemér Balás P.* interpreted the mixing of personal and property relations in the following manner as a consequence of the dualism of personality and property rights: "*the intellectual property itself* [...] *demands*

[27] BALÁS 1938, 7.
[28] BALÁS 1938, 8. NEUMANN 1895, 988.
[29] BALÁS 1938, 10.
[30] BALÁS 1938, 18.
[31] BALÁS 1938, 24.
[32] BALÁS 1941, 664.
[33] LEGEZA 2017, 150.
[34] BALÁS 2018, 699–703.

property substratum, property that can be viewed in two ways itself: in a static fashion, as a natural object, and in a dynamic fashion, as a carrier of meaning, which endows the property with independent mobility beyond its natural character, provides it with separate marketability. [...] *However, as intellectual property, manifesting from the property substratum, it separated from its author to some extent, it can be multiplied without the assistance of the creator, etc., therefore the property rights of the author do not exclusively cling to him as much as the more intellectual rights, they become transferable.* [...].”[35] *Balás* considered the commercial value of the author’s work as a sign of property dynamism, through which it became a product.[36] This transformation made it possible for intellectual property to have independent mobility as a property in commerce.

In relation to copyright, *Péter Mezei* examined in detail the copyright law proposal of *Balás*, its system and dogmatics. *Mezei* also highlighted that the author looked to several international examples, but still used solutions that fitted into Hungarian traditions as well.[37] In relation to the rights connected with the author, *Mezei* noted that “Balás P. did not tie the protection of rights connected with the author to the duration of the protection of property rights. Thus, his Proposal followed the French dualist example in this regard, and would have provided unlimited duration for the realization of these intellectual interests. Hungarian legislation did not adopt this solution in the end, but […] followed the German monist direction with specific protection durations.”[38] He also highlighted the linguistic novelties of *Balás’* concepts, which enriched the Hungarian literature on copyright. According to *Mezei*, the proposal “suggested the use of several excellent terms, and as such, multiplication and dissemination are unavoidable elements of contemporary norms. In other cases, however, his use of expressions remained without reaction. Examples include Balás P. using the term “intellectual creation” (szellemi alkotás) instead of “author’s work” (szerzői mű), “intellectual interests” (szellemi érdekek) instead of “rights tied to the person” (személyhez fűződő jogok) “showing originality, and compared to this is individually novel and capable of conveyance” (eredetiséget mutató, s ehhez képest egyénien újszerű és közlésre is alkalmas) instead of “individual, original character” (egyéni, eredeti jelleg), “linguistic creation” (nyelvi alkotás) instead of “writer’s/literary work (írói/irodalmi mű), “sale” (értékesítés) instead of “use” (felhasználás), and “indirect acquirement” (közvetett elsajátítás), instead of “adaptation” (átdolgozás).”[39] Alongside *Mezei, Tamás Nótári* also noted that *Balás* wanted to evade the work-specific perspective in copyright, and instead moved towards a more general regulatory direction.[40] *Mezei* assesses *Balás’* copyright law proposal as “*containing reformist views to its fullest extent, from terminology to structure, and most importantly, in its substantive provisions.*”[41]

[35] BALÁS 1941. 665.
[36] BALÁS 1941. 684.
[37] MEZEI 2018, 45. 47.
[38] MEZEI 2018, 51. LEGEZA 2017, 150.
[39] MEZEI 2018, 46.
[40] MEZEI 2018, 45. NÓTÁRI 2018, 91.
[41] MEZEI 2018, 54.

Personality rights

Only few pieces of legal literature concern themselves with describing personality rights in comprehensive terms, textbooks and other works (*for example Szladits, Fehérváry, Kolosváry*)[42] only examine the protection of personality rights in 1-2 pages. *Alajos Bozóky* examined personality rights in a detailed manner in the Fodor private law book,[43] but he did so when the field had no legal practice, as it was not even recognized legally speaking. Additionally, the rules he explained were based on the teachings of *Gierke*,[44] which he largely borrowed and interpreted in a Hungarian normative context. *Artur Meszlény* only examined normative rules (including judicial practice) in 1931.[45]

In essence, *Elemér Balás P.* was the first to comprehensively examine personality rights and insert them into the Hungarian legal system. It is interesting to note he examined personality rights in a unified manner, when it was only existing in fragments in actual statutory/regulatory law. *Balás* did not mention it explicitly, and it is not self-evident from reading his work, but in most cases, the legal basis of personality rights was not §§. 107-108 of the Hungarian Private Law Code of the time[46], but other regulations found in the legal system: grounds for divorce, statutory definitions of crimes, copyright. The recognition of personality rights by judicial practice was not given thorough attention, though at the time of the book's publication in 1941, it was already protected by judicial practice on a general basis. It was meritorious of this personality rights system that *Balás* attempted to examine each right individually, with the right to one's name being given special attention, which also has the richest jurisprudence in the Hungarian legal system, and thanks to which personality rights as a whole were eventually accepted by judicial practice. In my opinion, this is the case because it was the first right that could not be clearly decided based on other legal passages. Additionally, the need for redress did not manifest primarily in the context of monetary or other compensation (as opposed to other personality rights), but rather in the prohibition of continued infringement as soon as possible. *The rules of non-pecuniary damages are not found in the personality rights part, because it was a different legal basis than the one protecting intellectual interests.*

However, we do not receive normative information on the right to one's internal likeness, specifically on its contents and potential infringements. Nor did he examine in-depth post-mortem personality rights, even though they were already recognized in legal practice. Despite these issues, the creation of this comprehensive review of personality rights was indubitably a meritorious accomplishment for *Elemér Balás P.*. His work provided great assistance to the judicial practice of his time, in a similar fashion to the "Nagy-Szladits" which served as a basis for judicial practice in lieu of the private law code.[47] Even more so, *Balás'* theory of personality rights, his observations on the subject, continue to influence legal literature to this day, and even has influence on newer judicial practice.[48]

[42] SZLADITS 1933. FEHÉRVÁRY 1942. KOLOSVÁRY 1944.
[43] BOZÓKY 1901.
[44] GIERKE 1895.
[45] MESZLÉNY 1931.
[46] Magyarország Magánjogi Törvénykönyve, 1928 [Private Law Code of Hungary of 1928].
[47] The name of the 6-volume private law work that was published by Grill and edited by Károly Szladits.
[48] BDT 2018. 78.

In *Balás'* opinion, personality rights are exclusively ruled by the personal perspective, they do not possess property characteristics. "*However we conceive of the personality, the notion that it does not belong to the outer world is correct."*[49] Although the personality has an effect on the outside world, and manifests within it, *Balás* states that: "*it is never these outward manifestations that are the objects of personality rights protection, but always the personality itself, in its above-empiric character."*[50] Trademarks and brand names, as objects of the outside world, fall under a property perspective, through their primary function as signifying the company and the product. In the case of using personal names for such purposes, or for the purposes of marketing, the name leaves its above-empiric character, it is objectified, and enters into a close relationship with the objects of the outside world. *Balás* believed that such property-centric transformations of the name fall under not personality rights, but competition law (or potentially, trade law).[51]

It seems *Balás'* opinion on the subject has already been surpassed. There is a tendency towards interpreting personality rights as not only protecting personal, intellectual interests, but interests related to property as well, and thus these interests, and the property perspective connected to them, cannot be classified away into the realm of competition and intellectual property law. In the case of competition law, it is because the infringements of personality rights in the 21th Century do not typically occur between competitors. As for intellectual property law, it is because the legal objects of the personality rights that have become objectified still retain a strong connection to personalities. It was for this reason that German and Austrian jurisprudence have accepted the inheritability and limited marketability of personality rights.[52] It was for this reason that I have encouraged the acceptance of a property personality right that combines the property and personal perspective, as the subjective right of objectification-based property personality protection.[53] The dominant German position, based on *Götting*[54] is that, as also followed by Austrian jurisprudence.[55] Property and personal relations mix inside personality rights, in a similar fashion to copyright, while *Beuthien* believed that personality products with a property value are completely subjugated by property dynamics.[56] In contrast, I am of the opinion that only a slice of the personal sphere can be separated from the above-empirical character with regards to the objectifiable personality traits, while in other respects and in fundamental character, personality rights do not support a property perspective.[57]

In the Balás memorial book, personality rights were unfortunately only examined in the context of a study on the right to one's image, but not in a comprehensive context. *Zsolt Konkoly* highlighted the "dualist concept" of the right to one's image in *Elemér Balás P.'* work, the concept of the physical image that pays respect to the human bodily dimension,

[49] BALÁS 1941, 624.
[50] BALÁS 1941, 625.
[51] BALÁS 1941, 646, 648, 652, 655, 656.
[52] NJW 2000, 2195 – Marlene Dietrich; BGH NJW 2000, 2201 – Der blaue Engel; SZ 2010/70 – Maria Treben
[53] SCHULTZ 2019, 126.
[54] NJW 2000, 2195 – Marlene Dietrich; GÖTTING 2001, 585.
[55] OGH SZ 2010/70 – Maria Treben.
[56] BEUTHIEN 2003, 1220.
[57] SCHULTZ 2019, 117–120.

and the metaphorical (internal) image"[58], which did not appear in the works of his contemporaries in such a form. *Konkoly* called this *Balás'* own theory.[59] In truth, he borrowed this concept from German law. This can be seen in the work he wrote on personality rights.[60]

The concept of the internal image is a product of German legal literature in the 20s and 30s. This is also called the "life-image" (*Lebensbild)*, which expression later became commonly used. The definition of "life-image" did not go through German judicial practice either in such a way. It lives on as part of the statutory definition of the general infringement of post-mortem personality rights, as the "*unlawful distortion of the departed's life-image."*[61]

Competition law

Balás' most expansive and detailed work on the subject concerns competition law, in relation to which he examined the essence of "good morals' ' on a theoretical, statutory/regulatory and practical level as well. He considered the law's prerequisite to be capitalism, as only in capitalism does property gain independent mobility, and competition law protects and supports this independent movement of the property.[62] "*The personal element may only appear in system-compliant competition insofar as it relates to the proper expression of the products' concrete advantageous qualities, to rousing the interest of the consumers, and to provide them with the necessary information.*"[63]

Balás separated property and personal morals, and in relation to the predominance of the property element, he highlights that "*the central nature of the property can only be possible alongside certain moral behaviors, namely, if the property element is realized unadulteratedly and entirely."*[64] He examined this individually for each private law statutory definition of competition law (false praise of products, impinging, imitation, denigrating fame and credibility, snowball-contract, exposing or unlawfully utilizing business or industrial secrets), including business bribery as well. In his opinion, all of these definitions shared a common element in the moral character of property, and disagreed with *Ulmer*[65] in this context, who believed that it is not possible to find a common ground for the whole of competition law and its individual statutory definitions.[66]

All private law statutory definitions of competition law thus protect the moral character of property, and are thus objective, and only support the independent, person-lacking movement of the product (property), even if the personal element appears to manifest in them. This personal character is only illusory, and serves the dynamism of property. "*The false praise of products appears to have a property-esque fact residue, while the fact residue of impinging appears to reflect on personal attributes: name,*

[58] KONKOLY 2018, 39–40.
[59] KONKOLY 2018, 39.
[60] BALÁS 1941. 639.
[61] BGHZ 50, 133 – Mephisto; NJW 1990, 1986 – Emil Nolde.
[62] BALÁS 1940, 19.
[63] BALÁS 1940, 19–20.
[64] BALÁS 1940, 28.
[65] ULMER 1932.
[66] BALÁS 1940, 63.

company, etc. However, the personal character immediately disappears, or is forced into the background, if we examine the fact residue closer, and determine that persons are only involved insofar as they act in relation to their business enterprise. And the business enterprise, by definition, is the negation of personhood: the enterprise is a function of commerce, without regards to the relations of elements serving this function, and thus also without regards to the person of the owner."[67]

Based on the analysis of statutory/regulatory law and legal practice, *Balás* concluded that courts use the terms of business competition and unfair competition correctly. He mainly related this to the Swiss and German laws and legal practice, and specifically criticized the German system. He furthermore highlighted that from a property perspective legal practice placed too much emphasis on the prohibition of comparative advertisement.[68]

He concluded that the essence of business competition lies in that the property perspective is predominant, properties compete with each other, the personal perspectives are not directly connected to the subject.[69]

Balás consistently reinforced his opinion in his studies on the mutual interaction of personal and property elements in competition law. An opinion which he later expressly detailed, that property interests relating to personalities must be separated from personality rights and dealt with in the context of competition law, within statutory/regulatory law. Furthermore, it is probable that this idea came to him from competition law itself, as he expressed this view even before he expounded upon any kind of theory relating to property perspectives. The degradation of the personal element, the propertification, chiefly appeared in trademarks and brand names, in relation to the statutory definition of servile imitation (character-impinging). The goal of the legal institution is to signify the company and the product. Here, the watershed question is whether the personality right fully objectifies itself and thus is only tied to property dynamism, or if the objectification is only partial, and the relationship with personality rights is still extant.[70]

The utility of personal and property perspectives in contemporary times

We can see the expansion of the personal perspective on property elements in that animals were removed by the Hungarian legislature from the definition of property, and accomplishes their protection through expansive definitions.[71] However, we can also observe developments in the opposite direction if we examine the monetary value and commerciality of personality rights. In this regard, the property element intrudes into the most personal rights defending personality, and opens them up for competition and commerce.

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[67] BALÁS 1940, 31–32.
[68] BALÁS 1940, 62.
[69] BALÁS 1940, 63.
[70] KUNCZ – BALÁS P. 1924. 42. From the judicial custom: K. IV. 1753/1939. K, P. IV. 3967/1937.
[71] Act V of 2013, Section 5:14. paragraph 3.

With regards to copyright, monism[72] is penetrated by the property perspective, and the legislator makes it possible to transfer property rights. These are typically the cases, in which the author is forced into the background, the personal quality is rudimental. These include software[73], databases[74] and works created for marketing.[75] We can observe a similar dynamic in works created in relation to employment contracts, where property rights transfer to the employer.[76]

Artificial intelligence represents similar challenges in relation to intellectual property law, and private law in general, as the human subjectivity, sensibility and expression of intent are all reflected in the actions of the artificial intelligence, and this touches upon the basis of private law, the capacity to act, and the personality of the author. *Balás* hypothetically would say that the expansion of the personal perspective beyond humans not only touched businesses (legal persons), but extended beyond to animals, and the artificially thinking, independently willed artificial intelligences as well.

Balás correctly seized the essence of competition law, but the personal element intrudes into it even today, as celebrities are incorporated into advertisement, which led to personality rights falling under a property perspective in Germany.[77] This is the case as well for influencers. The *customer to customer* advertisement is based on a personal character, but it is subjugated to the dynamic property perspective, serving the product.[78]

From this, it can be seen that *Elemér Balás P.* developed a dualistic societal perspective that stands the test of time even with the challenges of today's technology, which can be described through this perspective just as well.

Conclusion

Based on the different professional directions manifesting in the work of *Elemér Balás P.*, he is rightly called the last Hungarian legal polymath. *Balás* is not only considered one of the greatest Hungarian jurists because of his contributions to social sciences, as well as the dynamic property and personal perspectives he pioneered, but also because of his dogmatics-organizing work on the various individual legal fields, which continue to hold much importance to this day.

The legal genius of *Elemér Balás P.* can be characterized as follows:

He was on the one hand, deeply practical, not only a theoretical expert, so he always took into account the needs of his current era, society, economy and technology, and adjusted the law to them. This is otherwise very characteristic of the Szladits school of jurists, and appears in the work of *Elemér Balás P.* as well. On the other hand, he was characterized by his theoretical perspective, his ability to organize, which did not stand

[72] Act LXXVI of 1999, Section 9 paragraph 1 (Szjt. in the following).
[73] Szjt. Section 58 paragraph 3.
[74] Szjt. Section 61 paragraph 2.
[75] Szjt. Section 63 paragraph 1.
[76] Szjt. Section 30 paragraph 1.
[77] NJW 1992, 2084 – Joachim Fuchsberger.
[78] See for example the Competition Authority's #GVH#Adequacy#Opinon-leader guidance. http://www.gvh.hu//data/cms1037278/aktualis_hirek_gvh_megfeleles_velemenyvezer_2017_11_20.pdf (downloaded: 20.03.2020.).

alone, but was synthesized with practical needs. Thirdly, his examination, assessment and often critique of foreign legal models can also be highlighted. This is shown by how he published in several languages himself. Fourthly, his ability to see into the future, and his need to address the legal challenges of the future are also notable: his sensitivity to new technologies, and his decision to place them at the centre of legal examination. Fifthly, the organic nature of his work, the respect for Hungarian legal traditions, including the constantly evolving legal language.

Based on these particularities, we must agree with *András Koltay,* according to whom *Elemér Balás P.'* work is not only a curiosity of legal history, but is also a repository of valuable legal statements and observations that can be used even today,[79] knowledge that will be cherished as part of Hungarian law forevermore.

III. His selected works

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[79] KOLTAY 2018, 135.

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