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CONFERENCE ON COMPARATIVE AND INTERNATIONAL LAW

- International Conference -

- IVth edition -

June 14, 2024

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Section II.
Comparative Private Law

Friday, June 14, 2024

Online on Zoom

Keynote speaker:

Lecturer ***Radu Ștefan Pătru,*** *Faculty of Law, Bucharest University of Economic Studies*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

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SCIENTIFIC PAPERS

10.00 - 11.00

THE ECONOMIC/BUSINESS IMPORTANCE OF FRANCHISING IN PORTUGAL - (RE)ANALYSIS OF THE FRANCHISING CONTRACT

Professor Carlos RODRIGUES
University Fernando Pessoa, FP-I3ID, CEPESE, Porto, Portugal
Professor Ana CAMPINA
University Fernando Pessoa, FP-I3ID, CEPESE, Porto, Portugal

Abstract

If we analyze the "2018/2019 Franchising Census" carried out by the APF - Portuguese Franchising Association, we see that in Portugal, and for the year 2018, Franchising generated a turnover of more than 8 billion euros, which corresponded to 3.96% of the national GDP. This turnover is the result of the "Franchising Contracts" signed by the 528 active brands, distributed among Services, with 57.7% of the preference, followed by Commerce, with 29% and Restaurants, with 13.3%. When we look at the levels of initial investment by Franchisees, we see that this initial investment was up to €25,000.00 for 43.6% of Franchisees, €25,000.00 to €50,000.00 for 26.5%, €50,000.00 to €100,000.00 for 17.7%, €100,000.00 to €250,000.00 for 9.9% and, finally, with an investment of more than €250,000.00 for the remaining 2.2%. In other words, more than 70% of the initial investment by franchisees did not exceed €50,000.00. The relevance of these figures for the Portuguese economy is the basis for presenting a legal (re)analysis of the "Franchising Contract" in the Portuguese legal system, using a logical-deductive methodology of the legal regime of this type of contract.

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THE ROLE OF TRADEMARKS IN KOSOVO: STEPS TOWARDS HARMONISATION WITH THE EU NORMATIVE FRAMEWORK

PhD. candidate Ermonda ZOGIANI
South East European University
Faculty of Law, Tetovo, North Macedonia

Abstract

The main aim of this paper is to analyse the treatment and importance of trademarks in Kosovo and the need to harmonise the legal framework of the Republic of Kosovo with that of the European Union. The inadequate legal framework, which led to inconsistencies between local and European legislation, caused numerous problems in practice, regarding the ineffective implementation and insufficient protection of these rights. To avoid these legal gaps and find adequate solutions to the identified problems, a new legal infrastructure was created with the entry into force of Law No. 08/L-075 on Trademarks in Kosovo, with the aim of promoting the economic development of the country by encouraging businesses, increasing investment, ensuring fair competition and protecting consumers. The amendment of this law comes as a necessity for its compliance with EU Directive 2015/2436 and Directive 2004/48/EC of the European Parliament and of the Council. Trademarks are of great importance, especially in the business sector, because further development of this legislation will create a safe environment for businesses, which will have an impact on the economic development of the country. In this paper, we have used historical, comparative and case study methods. The result of this paper will contribute to further improvements of our trademark legislation, as well as to the legal doctrine in Kosovo that lacks such.

THE LEGAL REGIME OF COHABITION IN INHERITANCE LAW IN THE REPUBLIC OF ALBANIA

PhD. candidate Ana PJETRI
South East European University
Faculty of Law, Tetovo, North Macedonia

Abstract

Cohabitation, being a social phenomenon, is evolving significantly in recent years, where in social aspects it is claimed that nothing can prevent a man and a woman, beyond marriage, to give life to a stable relationship, thus realizing a cohabitation that is known differently as more uxorio. The existential choice to give life to cohabitation and to the basic human rights is characterized by seriousness of goals and sustainability. Social factors point out that there are many reasons that lead to cohabitation, among which can be mentioned the avoidance of legal restrictions arising from marriage, the will to benefit from material goods or the avoidance of necessary requirements as happens in the crowning of marriage. However, even though it has evolved as a case, cohabitation still faces prejudices, especially in the religious aspect. In essence, menage de fait is an expression of the individual's freedom to choose, and this is the reason why

some foreign experiences tend towards the complete legal integration of de facto cohabitation with that of marriage, especially in terms of property and inheritance, excluding adoption or fertilization artificial. Based on the historical and comparative analysis between the current legal framework in relation to that of other countries, this study focuses more on the interpretation of the legal vacuum of cohabitation, including the right of inheritance, the division of property and other consequences in case division.

MOBILE BANKING REGULATIONS IN TURKEY

Professor Altan Fahri GÜLERCI,
Afyon Kocatepe University, Faculty of Law, Türkiye

Abstract

Not so long ago, just about 30 years ago, the dominant banking system was physical banking, which we can call classical banking. With the modernization of bank ATMs, which emerged in the 1970s, in the nineties, the acceleration of the internet and the availability of it to wider circles, classical banking transactions were gradually replaced by internet banking at the beginning of the 21st century. With internet banking, a significant part of classical banking transactions could have been carried out over the internet. The most important problem during this period was the intensity of cash usage. Since the 2010s, developments in information technologies have ushered in a new era, the mobile banking era. Now, almost all banking transactions, could have been carried out with applications downloaded to smartphones. The most important breaking point in this period, was the Covid 19 pandemic. Because with the pandemic, there was a rapid move towards a cashless society. Mobile contactless payments have become widespread. The abundance of cash made access to credit easier. Credit utilization and contactless payments via mobile banking have reached a point where they compete with classical banking. Whereas in the post-pandemic period, a new banking era, referred to as open banking, began. In this study, the fact that technological advances that mentioned above, force new legal regulations regarding banking transactions will be discussed through the example of Turkey and the developments in Turkish law will be examined.

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ASPECTS OF COMPARATIVE LAW WITH REGARD TO THE BUSINESS DECISION RULE. PARTICULARITIES OF THE LIABILITY OF THE ADMINISTRATOR OF THE COMPANY RELATING TO THE LIABILITY FOR THE INSOLVENCY OF THE COMPANY

PhD. Petre Andrei ȚÂRU
Lawyer in Bucharest Bar Association, Romania

Abstract

This study analyzes the rule of business decision in the laws of several states and focuses on similarities, but also differences between regulations. At the same time, it is a rich source of analysis on the way in which insolvency germs and regulations on the liability of company managers are reflected in the legislation of several states. The elements presented broadly argue essential aspects of the national legislation, but also the legislative regulations of other states, but the peculiarities and similarities mentioned focus on the specificity of our legislation. The terms of comparison reveal important and clear aspects regarding the liability of the natural person with a management/management position in a company making an incursion into the Anglo-Saxon legislation and practice of origin, but also in laws and jurisdictions.

SOME CONSIDERATIONS CONCERNING THE IMPUTATION OF LIBERALITIES MADE TO A NON-RESERVING HEIR

PhD. student Denise Cătălina MARTALOG
Doctoral School of Law, Bucharest University of Economic Studies, Romania

Abstract

Legal inheritance presupposes the existence of some categories of heirs expressly regulated by law, who reap from the deceased's estate in the quotas and order established by law. There is a category of legal heirs called reserved heirs, protected by imperative rules against the will of the deceased, when they try to disinherit them directly or indirectly. The will of the deceased manifested through liberalities is the essence of testamentary inheritance. Testamentary freedom represents the rule of inheritance law, the bequeather having the opportunity to dispose of his wealth as he wishes. When the two types of inheritance coexist, and the deceased disposes by liberalities in the presence of reserved heirs, in order to comply with the rules of legal inheritance and to divide the deceased's wealth efficiently and correctly, it is necessary to determine precisely the part of the inheritance on which the liberality ordered by to de cujus. The study aims to analyze the situations that may arise when the deceased, in the presence of the reservators, disposes liberally in

favor of a non-reservator heir and to identify balanced solutions that do not contravene the rules of legal inheritance and satisfy the principle of testamentary freedom.

REFLECTIONS ON THE TIMELY APPLICATION OF THE CIVIL LAW IN THE HERRITAGE MATTER

PhD. student Liviu Alexandru NARLĂ
Doctoral School of Law, Bucharest University of Economic Studies, Romania

Abstract

After 1989, in the context of Romania's return to representative democracy, the transition to the market economy, the start of the Euro-Atlantic integration process and Romania's accession to the European Union, an extensive resistematization of the legislative corpus was imposed, with the Civil Code finally being adopted, which under art. 220 para. (1) from Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, published in the Official Monitor of Romania, Part I, no. 409 of June 10, 2011, entered into force on October 1, 2011. In essence, the Civil Code from 2009 ensures the inheritance in general and the unworthiness of the successor in in particular, a modern, flexible and coherent regulation, at the same time capitalizing on the solutions proposed in the civil codification projects from 1940 and 1971, as well as those from foreign codifications, with mainly from France, Italy and Québec. The entry into force of the Civil Code from 2009, however, has generated a difficult challenge for practitioners of the law regarding the method of time application of the civil law on inheritance, with especially in terms of the opening of the inheritance, its transmission and devolution, the reports successions can stretch even over decades. In this context, the present approach aims to provide a coherent interpretation regarding the civil law applicable to the legal acts or facts found in closely related to the relationship of succession law.

SIMULATION – AN INSTITUTION WITH A PAST AND A FUTURE

PhD. student Ariadna GRIGORE
Doctoral School of Law, Bucharest University of Economic Studies, Romania

Abstract

Simulation was and still is a way to hide the real will of the parties. This mechanism can, in most cases, have an illicit purpose consisting of defrauding creditors or heirs or even tax evasion, but it can also have a noble purpose. This institution has been known since antiquity, embodying the Roman legal genius. Romanian private law evolved as the needs of society imposed changes, the Romanians being a very, thorough people in terms of analyzing the aspects brought up in practice, an analysis that led to the perfection of the legal system. In ancient Roman law, numerous cases of simulating a reality were distinguished, among which the claim action granted to peregrines, adoption, in iure cesio and fictitious

actions will be mentioned. In the Roman province Dacia, there was also the fiction of ius italicum, and in the Romanian Countries the institution of simulation appears in the "Legal Manual" of Andronache Donici, a concept taken over and supplemented by the Callimachus Code. The present study includes two parts, the first in which simulation applications and the evolution of this institution over time are presented, and the second part in which simulation is analyzed from the point of view of contemporary legislation and the implications arising from the simulation of certain acts. Emphasis is also placed on doctrinal solutions, following the case study on the current situation and resulting conclusions. Among the qualitative legal scientific research methods used in this study are the logical method, the comparative method and the historical method.