SECTION II - PRIVATE LAW

Friday, November 16, 2018

Room Robert Schuman, 2nd Floor, ASE main building – Ion N. Angelescu

Keynote speakers:

Professor **Raluca Dimitriu,** *Bucharest University of Economic Studies*

Lecturer **Radu Pătru,** *Bucharest University of Economic Studies*

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

SEEKING FOR SOLUTIONS TO BOUNCED CHEQUE: EXAMPLE OF TURKEY

Assistant professor Ezgi Başak DEMIRAYAK
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Abstract
The cheque, which has been replaced by money order and credit card in many countries, still remains as a payment instrument in Turkey. Several sanctions are imposed for the use of bounced cheque in all legal systems in order to increase the credibility of cheque. In the early years of the Turkish Republic, there were no special sanctions imposed for the use of bounced cheque. Such lack of legal sanction for drawing bounced cheque led to an increase in the number of bounced cheque. The said abuse gave cause for certain sanctions on drawing bounced cheque. Considering bounced cheque fraud within the framework of Turkish Criminal Code did not however constitute a proper legal solution for post-dated cheque in particular. As such, Turkish lawmaker had the sole opportunity to define a new crime named "drawing bounced cheque" including imprisonment in the relevant code regulating cheque related issues. But the increase in the number of bounced cheque due to the economic crisis in the nineties made it necessary to find out a new solution. Accordingly, the Turkish lawmaker abandoned imprisonment and carried out a new regulation based on the acquis communautaire that led to the employment of the principle known as "economic punishment for economic crime". Since 2016, the QR-code cheque is also employed in order to prevent drawing of bounced cheque. This study aims to review the aforementioned measures with regard to bounced cheque and analyze the impacts of the QR-code cheque.

TRADER'S ACCOUNTING BOOKS AS PROOF IN THE CIVIL LITIGATION IN REPUBLIC OF BULGARIA

Assistant professor Atanas IVANOV
South-Western University "Neofit Rilski"- Blagoevgrad, Bulgaria

Abstract
Trader's accounting books are a document; a document is an evidence needed to prove facts occurred in the past. With review of the difference of the lawsuit's moment of ruling and the moment of occurrence of facts relevant for the dispute needed is establishment of those facts through sources of information – means of evidence. The document as an item with characters or

electronic signs on it is a materialized expression for certain facts. The legal meaning makes the document relevant – assessed is the document not as such but whether it can be used as evidence in a specific lawsuit. Thus, it does not matter whether the statement is legally relevant and with legally irrelevant one the kind does not matter.

RAISING THE CONSCIOUSNESS OF MEDIATION IN COMMERCIAL DISPUTES

PhD. Altan Fahri GÜLERCI
Afyon Kocatepe University, Faculty of Law, Turkey
PhD. Ayşe KILINÇ
Afyon Kocatepe University, Faculty of Law, Turkey
PhD. Mehmet HATIPOĞLU
Afyon Kocatepe University, Faculty of Law, Turkey

Abstract
Where there is a dispute between the parties, the settlement authority of this dispute is the judicial body of the state. Because state courts have the exclusive competence to resolve disputes. In short, the competent authorities are state courts. However, it has recently been seen that the resolution of legal disputes before the judicial bodies of the state takes too many time. In addition, generally, courts spend too many time to resolve the small demands. This situation, of course, leads to the late manifestation of justice and undermines the trust in the society to the justice. Various solutions and theories have been produced to solve this problem, which is a common problem of all world countries. For example, arbitration is just one of these solutions. In addition, the mediation mechanism is one of the alternative ways that are applied frequently and effectively in the USA and EU countries. In Turkey, a new statute named mentioned as "Mediation Act on Civil Disputes" is the turning point about voluntary mediation. In particular, with the enactment of the Labour Courts Act, the mandatory mediation system was adopted in labor disputes. Thus, the workload of the courts has been largely abolished. However, the major deficiency is that the masses, who will be the biggest interlocutor of mediation practice, do not have information about the subject. Indeed, it is seen that merchants behave quite hesitantly to resort to mediation when they have commercial disputes. But, even the protection of confidentiality is a very important reason to prefer mediation because of the importance of trade secrets. Within this study will be discussed first, how the new developments on mediation legislation is reflected to the implementation. In addition, in light of the statistical data the current situation will be determined. Finally, suggestions will made about what can be done to promote mediation in commercial disputes.

LEGAL SIGNIFICANCE OF COMMERCIAL BOOKS UNDER BULGARIAN LAW

Assistant professor Raya ILIEVA
South-Western University "Neofit Rilski", Blagoevgrad, Bulgaria

Abstract
The article aims to analyze the legal importance of the merchant books the trader is required to keep in his business. At the same time, the study questions the role of these books, the functions they perform, and their probative force in disputes between traders.

A BRIEF SURVEY ON LAW AND ECONOMICS OF CONTRACT LAW

Assistant professor Yusuf Sertaç SERTER
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Abstract
From an economic point of view, right to own property and freedom of contract are two fundamental rights for the good of society. In other words, - together with property law - contract law is vital for a good functioning economy. Therefore, contract is stated to be a solid instrument to increase social welfare. For that matter, a brief description of economic analysis of contract law will be carried out in this essay. As such, the author of the essay attempts to find appropriate answers to certain major questions including the following: Why are contracts good from a societal point of view? What types of risks can arise in a

contract? What is a fully specified contract and how will risks be allocated in a fully specified contract? Why is a particular risk allocation in contracts important for both society and contracting parties? What are the consequences of transaction costs for contract law? What is the economic purpose of codification of default rules?

STOCK COMPANIES IN KOSOVO

Assistant professor Majlinda BELEGU
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Assistant professor Bashkim RRAHMANI
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Abstract
Law on Business Organizations recognizes the stock companies as the type of business society. The paper will use methods of analysis, method of comparison, method of systemic analysis, etc. In addition to these methods author will use the combined methodology in order to reach the main goal of the paper. If the stock companies belong to business societies, the after their registration what is their legal arrangement? According to the Law on Business Organizations, the stock companies could have only one shareholder and many or a lot of them. Each shareholder has its shares which is the property of the shareholder. Shares could be transferred from a shareholder to other judicial/physic persons. The founding capital of stock companies is determined by the law. This society is judicial person which is responsible for all its obligations and for these obligations it is responsible with its assets and its property. Personal property of shareholders doesn't contain the property of shareholders companies. Shareholder is responsible for society with its wealth only if shareholder abuses with the shareholder company. Paper analyzes competences in the society and the duration of foundation, then statute, memorandum a regulations of the society are analyzed is analyzed. Author with the paper covers and analyzes the founding capital and the organs of the stock companies, always determined by the law. Paper also explains the ways of the dissolution of the stock companies.

UNDESIRABLE BEHAVIOUR OF DIRECTORS: TRADITIONAL CORPORATE CONTROL MECHANISMS AS A CONSTRAINT

PhD. Samet CALISKAN
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Abstract
Companies are increasingly being subjected to risk of liability and loss due to directors' undesirable behaviour and they are understandably keen to deter directors from engaging with such behaviour even though it may increase the profitability in the short term. Seeking a compensation for the loss suffered through court can be an option to companies not only for the sake of recovering the loss but also maintaining a sufficient deterrence on directors, there are internal and external control mechanisms that can be initially implemented so that directors would not involve in any wrongdoing. This article introduces a wide range of control mechanisms, explores how strong deterrent effect that companies can maintain on directors through these mechanisms and whether there is any issue with them that may limit the ability of companies to control directors. It examines the foundation of each individual mechanism and how they have developed through the years, and it discusses that despite the fact that there has been considerable effort placed and number of developments made, the control mechanisms are still with strong limitations that weaken their constraining and disciplining impact on wrongdoing directors.

TYPES OF INTERNATIONAL ARBITRAL AWARDS AND THEIR EFFECTS, FOCUSING ON TWO CASE STUDIES: ARBITRAL AWARD ON CASE "LA PETROLIFERA ITALO-RUMENA" VS REPUBLIC OF ALBANIA (2007) AND ARBITRAL AWARD ON CASE "DIA LTD. VS OSHEE SH.A" (2015)

Lecturer Artan SPAHIU
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Abstract
An international arbitral award must be final, so that it may be subject of a request for a judicial recognition and enforcement in a particular state. The New York Convention instruments apply only to the final arbitral award, regardless of the different way it reflects the dispute in question. A final award is also considered to be one which does not directly resolve the dispute, but suffices to declare that the dispute would be settled by the parties themselves through a negotiating agreement. An arbitral award called a "partial award", which deals an interim measure, generally is not considered to be an arbitral award enforceable forcefully through the Convention's framework. However, in some jurisdictions, a partial award can be enforced in accordance with the local arbitration law, if the award disposes ultimately on a particular and independent issue. Parties in an arbitral process can reach a settlement agreement before the arbitrators make an award. This arbitral award may incorporate the agreement reached by the parties, accordingly being considered as a "settlement award" or it can only declare that the parties have a settlement agreement which have legal effects on them. In the case when the settlement agreement is converted into an arbitral award, the execution of the rights and obligations agreed by the parties materialized in the disposition of an arbitral award will be more effective through the New York Convention mechanism. This article, through literature review, regulatory frameworks interpretation, as well as the analysis of case studies, aims at identifying aspects related to the decision-making process of arbitrators. The manner in which the arbitral Tribunal disposes of important moments of arbitral procedure and for the final settlement of the dispute constitute very important procedural aspects of the international arbitral procedure.

SPORT SPONSORSHIP CONTRACTS

PhD. Tugce ORAL
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Abstract
Sports organizations constitute the biggest events of the world and are usually widely followed. The main financial source of many athletes or sports organizations is the sponsorship, which enables the sponsor to reach customers. In this paper, I begin by defining the sponsorship, sponsorship contracts and sport sponsorship contracts. Then, I will discuss the legal nature of them. Secondly, I will analyze the parties of this contract. In addition, I will deal with the objects of sport sponsorship contracts, namely the aims of promotion, image transfer and increase engagement with its target audience and to reach a larger target market for the sponsor; and provide funding and promotion for the sponsored party. Finally, I will discuss the rights and obligations of this contracts and in conclusion I will examine whether it is possible for the parties to claim damages for non-pecuniary loss in the case of a violation of personality rights.

THE REVISION OF THE POSTING OF WORKERS DIRECTIVE AND THE FREEDOM TO PROVIDE SERVICES IN EU: TOWARDS A DEAD END?

Assistant professor Sonia CARVALHO
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Abstract
The development of the internal market, based on the principle of freedom to provide services, as stated in article 56 TFEU, rendered common the posting of workers to another EU Member State. The risk of leading to social dumping in the host Member State, resulting from the less favorable working conditions of the sending Member State, justified Directive 96/71 / EC. Collective bargaining, which has always taken on a prominent place in the posting of workers framework provided for in Directive 96/71/EC, is clearly reinforced by Directive (EU) 2018/957 that amended Directive 96/71/EC. The case-law of the CJEU,

however, has revealed that in some cases the enforcement of the host Member State working conditions, in view of the lack of harmonization of labor law in the Member States in relation to minimum protection mandatory rules, can paradoxically constitute a restriction on the freedom to provide services. The analysis of the amendments introduced by the Directive (EU) 2018/957 will demonstrate that, despite creating a favorable legislative framework for fair competitive conditions between national undertakings and the undertakings that post workers, may compromise the delicate balance between the protection of workers and the freedom to provide services.

SOME CONSIDERATIONS REGARDING THE LEGAL LEAVE

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Abstract
In national law, the regulation of the right to rest leave must be based on statutory rules, in clear rules, which do not contravene the fundamental rights provided by the Constitution or the rights provided by Law no. 53/2003 republished - Labor Code, as subsequently amended and supplemented. In the last period, we are witnessing an administrative practice that results in the right to rest leave, which the holders acquire with the acquisition of the quality of the employee, on the basis of rules placed lower in the hierarchy of normative acts compared to the norms with the law which guarantees the right to rest leave. If for the employees employed in the private system the provisions of Law no. 53/2003 republished - The Labor Code, as subsequently amended and supplemented, as well as the provisions of the collective labor contract under the conditions of Law no. 62/2011 of the social dialogue - republished, with the subsequent modifications and completions, there are some doubts in the public system due to the fact that the public institutions continue to base their legal opinions on the provisions of H.G. no. 250/1992 on the holidays and other holidays of the employees in the public administration, in the autonomous registers of specialty and in the budget units republished, with subsequent amendments and completions.

A NEW PERSPECTIVE ON THE BASICS OF TORT CRIMINAL ACCOUNTABILITY IN THE CURRENT CIVIL CODE

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Abstract
The institution of Tort Criminal Responsibility faced this millennial beginning with a real "crisis" by affirming reformist ideas placed between tradition and modernity, present and future, subjective and objective. The increase and diversification of the damage, on the one hand, but also the real difficulties in identifying the responsible person and proving his culpability, on the other hand, call into question the need to harmonize the legal norm with the realities of social life, providing the legal framework for reparation of all injustice caused. In the evolution of this legal institution three phases have emerged: sanctioning, based on fault, aimed at punishing the guilty of producing damage, reparation, based on warranty, risk and equity, aiming mainly to ensure the legal framework to cover the indemnity independent of the fault to the responsible person for the restoration of the destroyed and preventive social balance, consisting in anticipating and avoiding serious, immeasurable, environmentally damaging, human existence, not yet produced but possible. Our study aims at presenting the main issues regarding the foundation of tort law in the current Civil Code, taking into account the realities of contemporary society, to highlight the innovative, progressive aspects, capable of providing more effective protection to the victims of the illicit deeds.

CIVIL LIABILITY. DAMAGES AND PENALTY CLAUSE

PhD. student Raluca Antoanetta TOMESCU
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Abstract
Tort law civil liability was always a constant manifestation of social life in the community, having as its main effect the birth of a new legal obligation relationship established between the author of the deed and the injured person. Apodically, legal liability will result in an attempt to make good the damage in principle, and when it is no longer possible to repair the damage, it will be in the form of legal or judicial damages, or in the form of a penalty clause in the case of damages conventional interests. From this perspective, we considered it appropriate to emphasize the effect on the penalty clause of the hypothesis of intervention on the contract with another sanction of law, applicable in the case of culpable non-fulfillment of the contractual obligations, namely rescission or termination. The current Civil Code determines that, upon termination of the contract, the parties will be released from any obligation. Therefore, by termination of the contract, as a result of the declaration of termination, respectively the resignation, the obligations stipulated in the penalty clause are abolished, because the source itself was abolished, and we can no longer speak of a contractual obligation liability. Of course, in this hypothesis, the lender will have at hand to claim non-contractual interest damages, where the person who considers himself harmed will have to prove the damage and its source.

COMPLEX LEGAL INSTITUTIONS WITH RELEVANT EFFECTS ON PROFESSIONAL ACTIVITY

Associate professor Gheorghiu VALERIA
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Abstract
The Romanian contemporary society imposed a profound transformation of many traditional legal institutions. From this perspective, one cannot overlook the profound change brought by the current Civil Code in contractual matters, namely the unification of the legal regime for civil contracts and commercial contracts. In the context of the assimilation of European values, the adoption of the monist system of regulation on the contractual domain by the Civil Law was imposed by the fundamental transformations of the entire economic life in Romania and of all the relations having a patrimonial character from the Romanian society. In this study we will stop on the legal regime applicable to contracts that are particularly interested in banking activity: current account contract, current banking contract and other bank contracts. The contractual freedom allowed to legal subjects to conclude current account contracts is exploited by banking institutions, both at the end and during their execution. The lack of legal protection for clients in general and for professionals in particular generates bargaining imbalance and additional contractual power for banking institutions. The impact of legislative amendments to former business, business, financial and banking activities on the realities of everyday life, beyond all doubt, is overwhelming and visible, with decisive macro-social effects.

TELEWORKING

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Abstract
Law no. 81/2018 of teleworking refers to specific professions such as brokers, sales agents, employees involved in social media activity, analysts, programmers, accountants, financial and tax consultants, translators, etc. Teleworking is the form of work organization in which an activity that may be performed within the workplace organized by the employer is carried out by an employee, from a distance from this location, on a regular and voluntary basis, at least one day per month, using information and communications technology, based on an individual employment contract or an additional act. Prior this la, the legal possibility an employee could work somewhere else than employer's place, were by working at home, detachment or delegation agreement, or by signing a mobility clause. Teleworking regulation is in line with European legislation, responding to labor market needs and demands, but the application of teleworking legislation will raise problems, especially regarding the activities

in the norms of safety and health at work and in terms of highlighting the hours provided by teleworkers and the controls performed by the representatives of the competent authorities.

THE DELAY OF PAYING THE LEASING RATES IN THE CURRENT ROMANIAN REGLEMENTATION. PROJECT ADOPTED IN 2018. ANALYSIS OF COMPARATIVE LAW

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Abstract
This paper aims to demonstrate why the solution voted by the Romanian Senate regarding the limitation of the users' responsibility in the leasing contract, by modifying E.O.51/1997 concerning the leasing operations and the leasing societies, in March 2018, is not grounded enough legally, and why we do not recommend to be adopted, even if, de plano, we agree with the increased protection of the user. In this argumentation we use comparative law.

OBSERVATIONS ON THE DAMAGES GRANTED IN THE CASE OF THE ADMISSION OF THE APPEAL TO THE DISMISSAL DECISION

Associate professor Monica GHEORGHE
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Abstract
The study aims to analyze a consequence of the annulment of the dismissal decision by the court, for reasons of lackluster or unlawfulness. According to art. 80 of the Labor Code, in the event of the finding of illegality and / or inadequacy of the dismissal decision, the court orders the cancellation of the unilateral act of dismissal. An effect of the annulment of the dismissal decision is the employer's obligation - in all cases - to compensate the employee equal to the indexed, increased and updated salaries and the other rights that the employee would have been entitled to if he had not been dismissed. In relation to the imperative wording of the legal text, atypical assumptions are considered in which the award of damages should be nuanced in relation to the factual situation that led to the termination of employment relations. There are also issues related to the content of the claims and their amount.

DIRECTOR'S DUTY NOT TO CONSCIOUSLY DETERMINE THE COMPANY TO BREAK THE LAW– REALITY OR CONTROVERSY?

PhD. student Adina PONTA
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Abstract
The paper at hand will analyze directors' duty not to make decisions which determine corporate violations of positive legal norms and it will provide an interpretation of corporate governance practices that underpin this duty in pre-existing institutions. In the first part, we will pursue the doctrinal attempts of integrating the duty of compliance within the contents of the duty of care or duty of loyalty. We will follow the evolution of this duty, from a simple effect of the ultra vires doctrine, to an obstacle of the contractual underlying of companies, to an element of the duty of loyalty. The paper will review effects that corporate legal violations have on agents' liability, such as tax law, competition law, labor law, human rights and environmental law breaches, and will illustrate other essential features of this duty, such as compliance with corporate governance codes, ethics and corporate social responsibility. Finally, we will demonstrate that regardless of the approach of good faith in corporate governance, as a distinct fiduciary duty or as element of the duty of loyalty, the duty of compliance is a prerequisite of good faith and can be accomplished simultaneously with the duty to maximize corporate profit and shareholders' wealth.

FEATURES OF NON-EXECUTIVE DIRECTORS' FIDUCIARY DUTIES

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Abstract
Among the effects of the 2007 financial crisis on corporate governance, the developing role of non-executive directors and their expanding duties require particular attention. By nature of their function, non-executive directors mitigate risks determined by information shortcomings between shareholders and managing directors, on the assumption of effective exercise of their duty of oversight. However, this subsidiary duty is not within the essence of non-executives' role, the same perspective being reflected in statutory rules of several European countries. This paper will examine the particularities of non-executive directors' fiduciary duties, incorporated from common law doctrine, by providing a comparative overview of EU member state approaches. The paper will pursue the evolution of the non-executive function in continental law and examine recent European studies, which extend the scope of non-executive directors' duty of care. The objective is to demonstrate that fundamental differences between national regulations are determined by different understandings of the function of non-executive directors, for example, subsets of their fiduciary duties are divided in Romanian corporate governance between different managing bodies of the company.

SOME SPECIFIC ASPECTS CONCERNING THE COMPANY BY SHARES

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Abstract
The company by shares is the prototype of company of capitals, since this legal form of company is set up and functions only based on the contributions made by the associates, who are liable for the social obligations within the limits of these contributions, so that the person of the associates or the trust between them is irrelevant. In exchange for the contributions they make within the company, the shareholders receive negotiable instruments, which can be transmitted freely. From this perspective, the company by shares was conceived as a form of organizing large-scale activities that require and concentrate important funds, made available to the company by a large number of shareholders. These significant aspects, which have influenced the legal regulation applicable to it, characterized by excessive formalism, complicated and strict rules, with countless conditions imposed by the law in order to protect both third parties and minority shareholders, lead to the conclusion that this legal form of company is not appropriate for small activities with a reduced number of associates, because the advantages of choosing this form of company are not justified, as compared to the disadvantages it implies. Within this context, we consider that an analysis of this form of company, even though is not intended as exhaustive, but highlights particular significant aspects that underline its juridical specificity, may appear important and particularly useful, both for analysts in law and practitioners.

ISSUES ON DISCRIMINATION IN MATTERS OF REMUNERATION. CASE STUDY

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Abstract
The existence of issues concerning discrimination in the employment legal relationship requires the application of acts or facts which have as their object direct or indirect discriminatory actions. These apparently neutral acts are susceptible of promoting different legal and prejudicial treatments to individuals found in legal situations considered comparable. Practically, procedures that have the ultimate effect of breaching the principle of equal treatment and non-discrimination fall into a state of non-realization of the full use of workers' fundamental rights and freedoms, which has led to the necessity of introducing elements aimed in particular at defining the phenomenon, with an extension to the introduction of justified discrimination requirements. The integration and combating of the discrimination phenomenon in the legal relations of labor under the laws of the Member States of the European Union, the acceptance of the limitations in the judicial practice, the involvement of the doctrine, have determined a constant process of evolution and analysis of the phenomenon, in parallel with the extension of the discrimination

criteria application, in order to limit the restriction of the fundamental rights. The article presents issues regarding the special legal norms established to be applied in matters of remuneration with respect to the public institutions, as well as their correspondence with the regulations regarding the protection of fundamental rights and freedoms in the field of legal labor relations.

PART-TIME WORKING: ASPECTS OF EMPLOYEE'S RIGHTS

Professor Marioara ȚICHINDELEAN
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Abstract
Part-time working is a method of ensuring the reconciliation between professional life and family life, the possibility of undergoing education and training, of improving the qualification and of opening new professional opportunities to the mutual advantage of employers and employees in a manner that supports the development of enterprises. Employees' rights based upon a part-time labour agreement can be grouped in rights given unconditionally or rights conditioned by the performance of a certain volume of work, the latter being a characteristic of this type of labour agreement, taken from the special regulation. In this survey we will refer to particular aspects of certain rights given to the employee who performs part-time working, namely: the right to a salary for the work carried out, to weekly rest, the right to annual rest leave, seniority, length of service in this field and retirement contribution.

ON THE DISSOLUTION OF THE LIMITED LIABILITY COMPANY. DISAGREEMENTS BETWEEN SHAREHOLDERS

Lecturer Cristina COJOCARU
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Abstract
The limited liability company, similar to the general partnership is set up and functions on the grounds of the the trust between shareholders. Therefore, this type of company has an intuitu personae character, just like any company of persons. The limited liability company operates as long as the conditions laid down by law are met, and if any or more causes leading to the improper operation of the company, it shall dissolve. One of the dissolution cases is that stipulated by articles 227 paragraph (1) letter e) of Law no. 31/1990 – the dissolution by court decision respectively – when the dissolution can not be decided following a decision of the general meeting – on solid grounds, which can be misunderstandings between the shareholders. Such misunderstandings are not by themselves enough to lead to dissolution, but it is necessary for them to determine the improper operation or lack of any company's operation.

THE CONTENT AND ORGANIZATION OF STATUTORY AND EXTRASTUTORY CONVENTIONS

PhD. student Carmen Andreea PURCEA REZEANU
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Abstract
The theme "The content and organization of extrastutory conventions" is a rare topic both in Romanian legislation, in doctrine and jurisprudence. This theme is a subject proposed to clarify and bring novelties into the sphere of commercial law. The main objectives are to provide a clear, well-defined framework for the organization and content of these atypical contracts (extra-statutory conventions). Due to the complexity of the field, the research will be outlined on the compatibility of these conventions if they have the capacity to anchor the corporate market, effervescence and transparency. The work involves the rich and complex presentation of the theoretical and unidentified aspects in the literature, analyzing the practicalities of the Community jurisprudence. The legal research will aim at gathering the principles, issues of the stages, methods, techniques and tools of investigation and scientific knowledge of legal phenomena, playing an important role in the final outcome of the project. The

actual research will consist of documenting, debating and proposing solutions to problems and gaps in both doctrine and legislation and jurisprudence. These conventions are the civilized way of confronting the freedom of contracting associates, the particular or fractional interests of the associates in society, finding the appropriate instrument for extrastate conventions.

PERFORMANCE AND COLLECTIVE DISMISSALS – AN EVALUATION OF THE LEGAL PRACTICE ON THE SUBJECT MATTER

PhD. student Ioana Cristescu
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Abstract
The concept of performance, in principle, implies a subjective assessment of the quality of work and the extent to which the "winning behaviors" are manifested by use of knowledge, skills and abilities by the employee in the process of work. In this context, it seems surprising to find within the amendment in 2011 of the collective dismissal procedure stipulated by the Labor Code some stages and concepts linked to performance within the work frame of the dismissal regulated by art. 65 et seq of the Labor Code. Although, essentially, is a type of objective dismissal based on the removal of the employee's working place for one or more reasons unrelated to his or her person, the redundancy may be influenced during the collective dismissal process by subjective elements associated to performance concept. Such subjective elements are present both at the stage the assessment of goals achievement and at the stage of applying the criteria for prioritizing the dismissals by application of performance criteria or traditional social criteria. The hybrid nature of the selection criteria within the collective dismissal procedure is also highlighted by the recent legal practice, which begins to reveal the increase of the consciousness of legal science over that of human resources management and leads to the development of a new, complex and interesting judicial practice. This article aims to initiate a broader study of the interference of these two domains, surprising the impact of performance in targeted redundancies regulated by labor law.

DELIMITING WORKING TIME FROM REST TIME IN THE CASE OF WORKERS RESIDING AT THE WORKPLACE

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Abstract
The article presents the particular problems encountered in the process of delimiting working time from rest time in the case of workers who, due to the specific nature of their work and its organization, imposed by the employer, reside at the workplace, in which case the question arises whether and under what conditions, the inactive periods spent by workers in their own residence may be included in working time. In order to identify these issues and possible solutions, the jurisprudence of the Court of Justice of the European Union is analyzed in order to establish principles applicable in this situation, as well as the national jurisprudence of Romania and that of other EU Member States, which is relevant in view of the common regulation of working time for all those States by Directive 2003/88. The practical implications of these issues are important from the perspective of the employer's obligation to respect the maximum weekly working time. In the presented conclusions, some criteria for the delimitation of working time from the rest time in this case are proposed, namely certain conditions, the fulfillment of which must be checked on a case-by-case basis.

THE POWERS AND THE DUTIES OF THE FIDUCIARY

PhD. student Gunay DUAGI
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Abstract
Fiducia is undoubtedly one of the most innovative institutions introduced by the New Civil Code and the fiduciary is on its turn the main actor in this institution. An analysis of the fiduciary's powers and duties is essential to perceive correctly the mechanism of the fiduciary relations. The most important power held by the fiduciary is given by the ownership of the fiduciary property. This right is absolute under the law, but it is nevertheless circumscribed to the obligations held by the fiduciary under the fiduciary contract. In addition, among the rights of the fiduciary, we also mention the administration and decision power in relation to the fiduciary assets in favour of the beneficiary. Also, the right to remuneration should not be ignored, especially in view of the fiduciary's professional position. As regards the obligations of the fiduciary, the most important is the one mentioned in the very definition of fiducia, namely the obligation to manage the fiduciary assets for and in favour of the beneficiary. The fiduciary also is held accountable and must inform both third parties and the parties to the fiduciary contract about the position in which he operates. Both the powers and duties of the fiduciary are "intertwined" to form the "fabric" within which it operates.

COMPARATIVE ANALYSIS BETWEEN FIDUCIA AND OTHER CONTRACTS IN THE ROMANIAN CIVIL CODE

PhD. student Gunay DUAGI
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Abstract
The similarity of fiducia with other law institutions of the Civil Code can be made to a certain extent. However, fiducia remains a profoundly different contract than other contracts such as the administration of the assets of others, the mandate or the mortgage and a thorough comparative analysis is necessary. Thus, the use of fiducia for certain operations and under certain conditions is perfectly justified. The comparison between fiducia and mandate bears many similarities, however a great difference is that in the case of the mandate there is no transfer of ownership. Also, fiducia can be confused with the administration of the assets of others, from which it also borrows some attributes in the matter of the fiduciary's remuneration. However, in this case, the differences are of substance. There are also many similarities to guarantee agreements as both types of contracts are accessories to a main contract that they guarantee. It is also worth mentioning that the introduction of fiduciary operations into the Civil Code is not only a complement to the already existing contract framework with another similar contract, but a real evolution towards the opening of Romanian civil law to a completely different category of advanced contracts that allow sophisticated business operations.

SCOPE OF THE SIMPLIFIED PROCEDURE REGULATED BY LAW NO. 151 OF 2015 CONCERNING THE INSOLVENCY OF PHYSICAL PERSONS

Lecturer Ileana VOICA
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Abstract
The paper deals strictly with one of the three procedures established by Law no. 151/2015 on the insolvency of natural persons, namely the simplified insolvency procedure, meaning its field of application. This field of application has been identified by correlating Article 3 (12) of the law defining insolvency, with Article 4, which refers to the general scope of Law 151/2015 and Article 65, which refers to the scope of the simplified insolvency procedure. The conclusion is that this regulation is useful for bona fide borrowers who are in difficult situations in their lives.).

THE APPLICABILITY OF LAW NO. 77/2016, IN REFERENCE WITH THE CASE LAW OF THE C.C.R., IN CASES WHEN THE FORCED EXECUTION STARTED AND THE IMMOVABLE ASSET WAS SOLD BEFORE THE ENTRY INTO FORCE OF THE LEGAL TEXT

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Abstract
This paper seeks to establish a suitable working hypothesis for the situation mentioned in the title, referring to the fact that on many occasions the practice of the courts was not constant, leading to diametrically opposed solutions in similar cases, with very significant effects on the litigant parties. It is the case where some of the debtors, whose claim has been admited by the court, all obligations arising from a bank loan contract subject to a forced execution having ceased, were no longer obliged to cover the difference between the principal debt due and the amount of money earned from the forced sale of the mortgaged property. On the other hand, other debtors, whose case regarding the extinction of the debt due to the forced execution of the mortgaged property, was dismissed, since the remission of the good was not voluntarily, and who were found in the situation where the forced execution was continued for the remaining debit after the distribution of the proceeds from the sale of the adjudged asset. The debt was usually employed penalizing interest and thus the forced execution proceedings continued until all outstanding amounts were extinguished. The analysis will follow the applicable law and jurisprudence of the C.C.R., the relevant doctrine and jurisprudence, in order to identify an appropriate solution to the problem of law.

THE VALUE OF PRIVACY - WHAT DOES THE PERSONAL DATA MEAN TO THE DATA SUBJECT AND BUSINESSES?

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Abstract
In a world where technology is progressing at a very fast pace, it is up to the legislator to come up with creative legal instruments that can answer to the newest and most challenging issue that arose and can arise in practice. In the past decades, privacy has become an important resource for the growing businesses or for the ones already renowned in the market that look for a way of expanding their activity. Knowledge is power, data is money – this phrase is representing the core of the present and upcoming companies that wish to develop or distribute their products. The personal information of natural persons is being targeted and used for determining the future and the direction of the market and interest in products and services. Through the present study we shall look at how privacy has been perceived over time, reflected in relevant jurisprudence and legal acts and how it is now understood by both the data subject and the controller. We will study a case that captures the observed practices of obtaining the consent of the data subject for data processing in return for access to certain services, also answering to the following question: is there a value-for-money relationship between the personal data and the benefits received in exchange of processing of information? This paper will cover the issues of monetized privacy and protection of personal data used in trade and commercial businesses, as well as the impact of the European legislation on such activities.

THE RELATIONSHIP BETWEEN LEGISLATION AND COLLECTIVE AGREEMENT IN LABOUR LAW. EUROPEAN OPTIONS

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Abstract
Is the intervention of the state in regulating collective labour relations a useful and beneficial tool, or rather a discouraging one? This is a long time concern of the doctrine, of the law-makers and of the practice of European industrial relations. And, on the background of different traditions and goals, the options are most diverse. Almost everywhere, the economic crisis and the digitalisation have altered the ratio of what the legislator has assumed and what is left to the social partners to regulate.

Sometimes, the state has withdrawn to a certain extent from the process. Freed from constraints, the social partners have become more responsible than in the previous decade for the concrete way of negotiating and regulating collective relations. In other cases, the legislator felt the need to intervene more forcefully to offset the fragility of social dialogue. The paper aims to present some of the European options in the field and to place the experience of the Romanian legislator in context.

CONSIDERATION REGARDING THE COMPENSATORY BENEFIT

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Abstract
Regulated for the first time by the Civil Code from 2009, compensatory benefit seeks to compensate for a significant imbalance that the divorce produces it in terms of the innocent husband's living conditions. The present study aims to analyze the necessary conditions to obtain a compensatory benefit according to the current legislation, to make a comparison with other institutions but also with the regulation from other legislation. The study uses the logical and comparative method, analyzes the legal provisions currently in force, as well as the point of view of the doctrine and the solutions derived from the judicial practice. The conclusions are in the direction of expressing concrete proposals to amend the current regulations.

CONSIDERATIONS REGARDING THE PROHIBITION OF THE USING THE OF PROBATION PERIOD IN THE INDIVIDUAL LABOR CONTRACT

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Abstract
The probationary period is the most appropriate way of verifying the professional skills - among the possible ones - given that during the performance of the individual labor contract, the skills of the employee can be tested. The objective of this study is to analyze the ban on the use of the probation period in the context of art. 33 of the Labor Code. Thus, we propose to discuss relatively the employer's ability to employ probationers through successive employment in a maximum of 12 months. We appreciate that it is useful to establish the practical implications of the legal provisions outlined above - in the context in which the probationary period is the most useful way of prior checking of the persons applying for employment.

ON CALL CONTRACT - A NEW FORM OF EMPLOYMENT. COMPARATIVE LAW ELEMENTS

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Abstract
Against the backdrop of the evolutionary trend of atypical forms of work and their diversity, the novelty of the atypical work arrangements lies not only in their proliferation and spreading at a particularly rapid pace in most Member States, but also in the fact that the forms non-standard work well-known so far have revealed many unknown versions and subcategories, which allows a subclassification of these forms into "atypical" and "very atypical". At present, these new hiring models are no longer marginal in terms of their use in European labor markets, but their number has increased exponentially, reaching the size of a real phenomenon. Considering an inexhaustible enumeration of these ways of providing work, we will especially refer to the on-call contract, while pointing to its usefulness in the labor market and the major negative implications its implementation implies. This is all the more so since the domestic labor legislation is not yet aware of this new way of working at the regulatory level.

INVESTOR PROTECTION AND STOCK MARKET DEVELOPMENT. AN EMPIRICAL APPROACH ON THE EUROPEAN UNION CASE

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Abstract
A fundamental objective of the stock market regulation is the investor protection, which influences the stability and the degree of development of capital markets. Using World Bank's statistical data for a period of 10 years (2006-2016), on the evolution of the minority investors' protection, respectively on the efficiency of commercial disputes' resolutions, the present paper aims at emphasizing the connection between regulation and the development of capital markets, both for developed and emerging European Union countries. The results obtained in the realized econometric study, based on panel data, are consistent with other results obtained in the empirical research in law, demonstrating the relatively weak linkage between investor protection and stock market development during the analyzed period. The obtained results undermine the effectiveness of stock market regulation, outlining that law enforcement on investor protection in the capital markets could be greatly improved.

DISCUSSIONS ON NEW EU-WIDE REGULATIONS ON THE POSTING OF WORKERS. SPECIAL CONSIDERATION FOR DIRECTIVE (EU) 2018/957 AMENDING DIRECTIVE 96/71/EC ON THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES

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Abstract
Posting of workers in the framework of the provision of services within the European Union is governed by Directive 96/71/EC. Recently, this Directive has been amended by Directive (EU) 2018/957 which has improved the legal framework in the field of the rights of posted workers in the provision of services. This study includes an analysis of the main changes made by amending directive, which will need to be incorporated into national law by 30 July 2020.

RECOVERY OF CLAIMS IN THE GDPR ERA

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Abstract
The processing of personal information, including the one relating to financial data, is subject to the legislation on personal data protection, covering both individuals, creditors and credit registrars, as well as European supervisory authorities. This study looks at ways of debt recovery within the limits of the European Personal Data Protection Regulation. The first part of the study presents, ratione materiae, the considerations envisaged for the adoption of the Regulation, but also the way its limitations capture the recovery procedure. The second part of the study takes into account the prerequisites for the adoption of codes of conduct in the field of debt recovery, and in the last part of this study there are presented a number of limitations imposed by the provisions of the Regulation in the debt recovery process.

THE RIGHT TO RETIREMENT IN THE "REVOLUTIONARY" VISION OF THE CONSTITUTIONAL COURT

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Abstract
The study analyzes the general juridical regime of retirement rights, in the view of the Constitution and the current legislation, reported to the recent decision of the Constitutional Court no. 387/2018, which allowed an exception of unconstitutionality and it was found that the legal provisions of article 53 line (1) letter c) of the Labor Code are constitutional insofar as the phrase "standard age conditions" does not exclude the possibility of women's request to perform the individual labor contract under the same conditions as men until the age of 65 years. Such a solution leads to the conclusion that women can, without being obliged, to continue their activity until the age of 65, thus eliminating a rule which has long been in the legislation, considered by some specialists to be discriminatory, also embraced by the Constitutional Court by that decision.