SECTION II - PRIVATE LAW

Friday, November 24, 2017

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

Keynote speakers:

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

Associate professor **Charlotte Ene,** *Bucharest University of Economic Studies*

Lecturer **Simona Chirică,** *Bucharest University of Economic Studies*

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

KNOW-HOW PROVIDER'S RIGHT TO CLAIM DAMAGES FOR NON-PECUNIARY LOSS IN LIGHT OF THE LEGAL NATURE OF KNOW-HOW

Lecturer Tuğçe ORAL
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Abstract
The know-how contract is one of the most important means for transferring and developing technology. It is crucial to find out whether the parties of know-how contract have a right to claim damages for non-pecuniary loss in light of the legal nature of know-how. In this article, I begin by defining the know-how contracts and in particular I will analyze the main obligations of the parties. Secondly, I will deal with the definition and the legal nature of know-how, since considerable uncertainty exists as to the degree or type of protection regarding the legal nature of know-how. There are different opinions put forward, which defines the legal nature of know-how as a property, an intangible asset, a monopoly of fact and a personality right. Finally, and on the basis of the conclusion reached under the previous section, I will discuss whether it is possible for know-how provider to claim damages for non-pecuniary loss.

COLLECTIVE DISMISSAL IN TURKISH LABOR LAW

Associate professor Nezihe Binnur TULUKCU
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Abstract
The system for the protection of workers against termination is called as job reassurance in practice and teaching in general. Indeed, in the legal systems of countries that adopt this assurance, it has become necessary to establish a balance between freedom of contract, employer's freedom of enterprise, and the protection of the authority of the employer and the removal

of workers from the job. Job reassurance should not mean that the worker can not be removed of workers from the work. In labor law, the protection of the work is as important as the protection of the worker. It may be necessary for the employer to start to apply economic and financial difficulties, to apply modern technology requirements in the workplace, to go a more efficient and rational working organization, or to inefficiency and behavior of employees. If the conditions of employment reassurance are met, the employer must terminate the indefinite-term employment contract of the employer and must rely on a valid cause arising from the employee's inadequacy or behavior or from the necessity of the employer, the workplace or the job. The employer's dismissal because of economic, technological, structural, and so forth business, workplace or as a result of the job requirements in the workplace is collective dismissal. Workers must be protected against termination. However, an economic reason for the operation may lead to the removal of a large number of workers. In this case, job reassurance must be provided to workers. Regulation on the issue of collective dismissal in the Labor Law is governed in accordance with the principles set out in Articles 13 and 14 of the ILO Convention No. 158. In our study, the concept of collective dismissal in terms of Turkish Labor Law, procedure to apply, obligation to get back to work, civil and criminal consequences of dismissal were investigated.

CHILD MAINTENANCE IN TURKISH LAW

Assistant professor Banu Bilge SARIHAN
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Abstract
The concept of alimony; the dictionary defines as, the whole of what is needed to make a living; as the legal sense is defined as connected with one month to one court decision that obliged to provide for. Family members of a moral rule, first of all to help each other. This moral without often any coercion parties in the framework adapts to this rule, but in this case the legislator for the processing always smoothly, has made it a statutory duty by going to road regulations to help each other for certain family members. Assistance in the form of alimony and child support maintenance can be divided into two main groups. Support resulting from family law, commonly referred to as maintenance support. Maintenance alimony; temporary alimony, child maintenance and poverty alimony. The care and upbringing of children in the marital union is entitled to custody of the mother and father in the framework. Mother and father use custody together. Custody of minors and adult children must sometimes restricted to persons, about paying attention to both the goods and to represent them as a whole of the rights and obligations of the law have been installed on the parents. Common life of the spouses or by court order issued at the end of separation has occurred judge may give custody to one of the spouses. side with custody of children have been left to him is obliged to look after and educate them. However, not given custody of his side, must participate in their child's care and education expenses amount to be determined by the judge according to financial strength. Associates alimony, separation or nullity or divorce, child custody as a result of which he had left his wife, child care and the financial strength to participate in the rate training expenses. Associates alimony, not a liability connected to custody, is a natural consequence of being parents. Because spouses are obliged to take care of children's care and upbringing. Child maintenance is required and even necessary foundation for child protection. In our study, it brought to mind the child's interests and the concept of an institution concerning child maintenance of public order, in case of dissolution of the family and protection of children should be judged within the framework of legal regulations concerning.

THE IMMATERIAL DAMAGES THAT CAN BE DEMANDED BECAUSE OF THE DIVORCEMENT IN TURKISH CIVIL CODE

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Abstract
A certain number of consequences show up in terms of spouses and children along with the divorcement. The consequences that are related to spouses can be classified as personal and financial. spouses, along with the divorcement, gain a new statue due to the marital breakdown. However, divorcement has financial results, too. Financial results, on one hand, aim to end financial relationship which arise during the marriage; at the same time regulate the demands of alimony and damages which

show up with the divorcement and its compensation. Divorcement can cause pecuniary or non-pecuniary loss to the spouse who is disadvantaged. The Turkish Civil Code allows the spouses to claim damages if the disadvantaged spouse is flawed or defective (TMK. M. 174/II). Our study has focused on non -pecuniary damages and how to decide its circumstances; its amount and its manner have been evaluated.

A QUIET AND DISCRETE REVOLUTION IN THE PORTUGUESE COURTS: THE TWILIGHT OF THE EMPLOYMENT CONTRACT?

PhD. Sonia CARVALHO
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Abstract
The distinction between an employment contract and a provision of services contract is a recurring theme in the Portuguese courts, regularly associated with the use of the provision of services contract to dissimulate an employment relationship under an apparent self-employment relationship. The lawmaker, in order to combat the misuse of the provision of services contract within an employment relationship, established, through DL 63/2013, 27.08, an administrative procedure in article 15-A of Lei 107/2009, 14.09, and a special lawsuit to recognize the existence of an employment contract, in art. 186º-K of the CPT, whenever there is a situation of self- employment, with the characteristics of employment contract. The analysis of the most recent higher courts case-law shows a clear trend towards the qualification of contractual relations as provision of services contract, in a sense, paradoxically, contrary to the efforts made by the lawmaker. In this paper, we therefore seek to scrutinize this incomprehensible favoring by the higher courts of the provision of services contract, whose maintenance may lead in the future to an inevitable weakening of employment contract, damaging employees, Labour Law and Society.

COUNTERFEITING AND ILLICIT DRUG SALES. EFFECTS ON INTELLECTUAL PROPERTY RIGHTS

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Abstract
The ability of man to be inventive and creative has led to economic development and social progress, but also to the creation of a real danger to his health and life when talking about the counterfeit and falsified drug market. Ensuring the observance of intellectual property rights is essential worldwide in public health or safety policies, as counterfeiting poses a threat to people. The consequences of medication counterfeiting on health are quite difficult to assess. The methods of counterfeiting and the ways in which such drugs reach consumers are diverse. We are talking about direct sale, import, packaging change (original packaging, but counterfeited drug), falsification of the prospectus or attachment of a leaflet in another language, application of counterfeit (holograms) on packaging, advertisements, on the Internet, by press, fictitious terms of validity. The paper analyzes the national provisions containing regulations related to the sale and counterfeiting of medicines, as well as the European ones in the field, as well as the measures that can be taken to reduce the risk of their use. There are also some examples of this case related to illicit selling and counterfeiting of medicines.

DEFENDING A STATE OF FACT THROUGH A LAWFUL ACTION. POSSESSION AND THE POSSESSION ACTION

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Abstract
The present study aims to discover in the doctrine the reason that has generated the reason why the legislator not only recognized the institution of possession alongside the sacred and complete right of property, but also confers defence to state

of affairs through a real action specific to the defence of a states of law. The possession of the property is recognized as a real action, which in principle requires action to be taken in order to exploit a real right of property, but in this hypothesis the possessive action protects only the state of fact called possession, without questioning the state of law. If property is the right, possession is nothing but the fact, but in spite of this possession has, over time, been imposed as a fundamental institution of civil law. The major importance that the possession has developed in the context of the civil circuit of values has ensured it a constant legislative consecration throughout history. The unanimously recognized possession as state of fact, is gaining value through its legal effects, occupying both the theoretical and the practical concerns of jurists, joining the full right of property. Without limiting the importance of possession to its main effect - acquiring the right to property by means of a prescription, apodictically possession corresponds to the property right itself, being an attribute of it. Under these circumstances, the defence of possession through a real action is merely a situation of normality.

ASPECTS OF DISCRIMINATION IN SALARY. STUDY CASE

Lecturer Dragoş Lucian RĂDULESCU
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Abstract
The concept of discrimination in labor relations includes all the acts or facts by which a different legal treatment applied to individuals in comparable situations is found directly or by apparently neutral actions. The infringement of the equal treatment principle will have as its main legal effect the impairment of the use of the fundamental rights and freedoms of victims of discrimination, subject to the absence of a genuine occupational requirement. In this respect, the imposition of some forms of regulation necessary to combat the disrespect of the equal treatment principle determined the first definition of the concept of discrimination, the imperative issue of the specific criteria applicable to the legal norms, their subsequent extending in the national laws to non-limitative acts, that, in the practitioners' conception, could lead to the appearance of effects specific to discrimination. In this regard, there has been a steady evolution of the concept of discrimination at national level, which has led to the possibility of extending the application field of the discriminatory criteria, giving rise to the possibility of a broad analysis of the facts which were presumed of having that effect. The article details the applicable legal rules in matters of salaries in the field of public institutions, the interpretation of the competent courts, the criteria of discrimination in the matter, and the means of reporting such facts.

THE CONSTITUENT ELEMENTS OF DISCIPLINARY TRANSGRESSION. STUDY CASE

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Abstract
The main effect of non-compliance of the employees with respect to the obligations resulting from the employment legal relations is the application of the specific ways of accomplishing the discipline of labor. In this respect we can state that the discipline of labor is not only a system of norms that allows the employee to meet the requirements resulting from the labor relations, mainly through the possibility of applying the specific disciplinary sanctions, but also of a preventive or stimulatory character under the aspect of forms of labor organization. As regards the principle of employee subordination in the legal relationship with the employer, in relation to his/her obligation to respect a well-established system of norms issued for the purpose of labor process, failure to comply with the resulting obligations leads to the possibility of applying sanctions for violation of the labor discipline. The article presents the conditions for the non-compliance of the obligations resulting from the employment relationships of civil servants, the legal basis specific to the violation of specific duties, the way of individualization of the sanction applied, as well as elements of judicial practice.

ILLEGAL USE THE OWN IMAGE RIGHT IN VIRTUAL SPACE

Associate professor Valeria GHEORGHIU
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Abstract
Image plays a vital role in modern society. The significance of the person's image is expressed in the civil law through the legislative or jurisprudential recognition of the autonomy of the protection of a person's image in relation to protecting other aspects of their personhood. Since the image consists of the person's representation, identification of the person appears to be an obvious and sufficient condition for awarding protection. The civil law approach based on the right of privacy or the right of personality is expressed mainly either via a duality, reflecting the extra-patrimonial and the patrimonial attributes to one's own image, or via the recognition of a single right with a dual nature. In present, the popularity explosion of social media application, besides the benefits offered by the total remove of communication barriers, it genertes some disputes regarding to the practising and the defens of the own image which is one of many rights of the personality. In this way, this study advise to reflect at this problem to see in what way we can practice and protect this right.

PARTICULARITIES OF THE INDIVIDUAL EMPLOYMENT CONTRACT OF THE PROFESSIONAL FOSTER CARER

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Abstract
This study examines - from the perspective of internal and international norms, judicial practice (internal, ECHR and CJEU) - some aspects regarding the institution of the individual employment contract of the professional foster carer that singularize this type of employment contract for the purpose for which it was regulated namely the requirements and the needs of the child being cared for. The organization of work and rest time, essential elements of social protection, will be the object of analysis that - from the perspective of constitutional norms and international human rights treaties - will highlight to what extent the legal regime applicable to the individual employment contract of the professional foster carer is or is not a restriction of his or her rights, whether it meets the principle of non-discrimination and equality in employment relationships.

CONSIDERATIONS ON NULLITY IN CASE OF COMPANIES UNDER ROMANIAN LAW

Lecturer Cristina COJOCARU
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Abstract
The company acquires legal personality after a series of formalities required by law are fulfilled, formalities that concern the constituent acts on which it is based. For this reason, it is very important to know the legal status of the company's constitutive acts and the consequences of their irregularities. Hence, both the essential conditions and the form of the company's constitutive acts are analyzed based on the legal provisions. It is also necessary to distinguish between the nullity resulting from the unlawful drafting of these constitutive acts and the nullity of society as such. Therefore, this paper is focused on these differences, as well as on certain practical issues about nullity starting from a recent court decision handed down by the Romanian Supreme Court.

WHEN THE TRADEMARK OWNER IS NOT THE USER. CONSEQUENCES IN ASSET VALUATION. THE POINT OF VIEW OF THE TECHNICAL FORENSIC EXPERT

PhD. student Raul Sorin FÂNTÂNĂ
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Abstract
In both judicial practice and private activity, an intangible asset valuation is increasingly important. In Romania there are tens of intellectual property trials annually, of which a number - unfortunately significant - is held by the violation of rights and, implicitly, the assessment of the prejudice. From the desire to remain the owner of the intangible asset even in the event the company enters into a possible insolvency, the owner of the company protects his asset by his own name, but forgets or fails to consider establishing a rights transfer agreement between himself and his company - usually a license, so that the use of their own asset, such as a trademark, by the firm is fully legal. The fair valuation of the asset as well as of the loss must have as its main source the accounting data of the parties in the process. The paper highlights both the difficulties in evaluating when the trademark owner is not the user, and some consequences in evaluating the asset. The material is based on real-life situations in the practice of over 25 years as a judicial expert of the author and wants to be a real support in the act of justice.

CONSIDERATIONS REGARDING THE CASES OF NULLITY OF FUSION. NULLITY FOR MAJORITY ABUSE. ASPECTS OF COMPARATIVE LAW

PhD. student Viorel BANULESCU
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Abstract
In this article we will present the nullity causes that occur in the merger of commercial companies. In the first part we will enumerate some definitions of the concept of nullity of the merger (section 1), then we will analyze two nullity causes, to distinguish the nullity of the merger from the nullity of the company (section 2). In section 3 we will analyze the concept of majority abuse as a variety of abuse of the law by proposing, de lege ferenda, the incorporation of this situation among the causes of the nullity of the merger (section conclusions).

THE NEW ROMANIAN REGULATION OF UNDECLARED WORK

Professor Raluca DIMITRIU
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Abstract
The "black" labour is an indicator of how efficient is the enforcement of the labour law. Irrespective of how progressive may the labour law system be in a society, the proliferation of work without employment contracts expresses the failure of the labour law system in the real market. In Romania, Labour Code has been dramatically changed in the summer of 2017, especially with the declared goal to better organize the fight against the undeclared work. This paper is an analysis of the impact of these changes in an attempt to highlight the consequences of the new regulation, which seems to be fighting undeclared work predominantly by punitive tools. Following a general approach to the vulnerability of the worker without an employment contract, as well as some of the reasons for such choice, the analysis starts from the identification of the practical difficulties raised by the new regulation. On the other hand, the paper highlights the benefits of returning to the consensual nature of the employment contract, as well as the disadvantages of the excessive widening of the definition of the concept of undeclared work.

SOME CONSIDERATIONS ON THE GENERAL PARTNERSHIP

Lecturer Ana-Maria LUPULESCU
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Abstract
The general partnership is the prototype of company of persons, since it is set up and functions based on the personal qualities of the associates, who know each other and trust each other, reason for which they agree to be unlimitedly and jointly bound for the obligations of the company they set up. Although this legal form of company is not very widespread in practice, which is undoubtedly explained by the risk determined by the unlimited and joint liability of the associates, the general partnership still presents some unquestionable advantages, worth to be emphasized, starting from the simplicity of the rules concerning its setting up and functioning, or the possibility of its creation even in the absence of initial contributions of significant value. Moreover, the continuity of the associates' options for this legal form of company demonstrates that it is not totally obsolete and lacking in practical interest, but it has successfully survived the passage of time, also considering the fact that its legal regulation has not changed significantly over the years. 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.

THEORETICAL AND PRACTICAL ASPECTS REGARDING THE MATRIMONIAL CONVENTION BETWEEN SPOUSES

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PhD. student Gabriela DUMITRACHE
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Abstract
By way of the present study, the authors have proposed to analyze the matrimonial convention between spouses, both from the perspective of theoretical considerations, as well as from the point of view of the notary practice. The writing pursues to display the organizational possibilities of the pecuniary aspects of marriage in the current economic context, grafted by the variety of marital situations. The study identifies the elements which can influence spouses' preference towards a certain matrimonial regime, and highlights the role of the public notary in the arrangement of the chosen matrimonial regime. The piece of work emphasizes the particularities of national law in the matter of matrimonial convention, in the light of the pithy French influence, and presents the advanced solutions in the French doctrine that can superpose the theoretical disputes born in the Romanian doctrine. The authors have recourse to use the systemic method through which it was intended to analyze the institution of the matrimonial convention by reference to practical solutions (empirical observations) adopted by the public notary at the instrumentation of a matrimonial convention. Our concise presentation may constitute a starting point for the future spouses/spouses looking forward to adopt a matrimonial technique, transposed into the pattern of matrimonial convention, to reflect as faithfully as possible the patrimonial relations between spouses, and also between them and third parties.

THE PARTIES OF THE FIDUCIARY CONTRACT

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PhD. student Gunay DUAGI
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Abstract
The parties to the fiduciary contract in general, and the fiduciary in particular represent the "engine" that moves the gear of this innovative institution. This study is dedicated to the analysis of the most important aspects of the fiduciary contract parties as they are briefly covered in the Civil Code, both by reference to current national regulation and practice and by reference

to international law and practice. On one hand, it is relevant that there are some restrictions imposed by the legislator on the fiduciary capacity and, on the other hand, there is a partial lack of correlation between the current legislation regulating the activity of the qualified subjects of the potential fiduciaries with the provisions of the Civil Code. At the same time, very useful regulations have been issued for some of the fiduciary categories (investment firms and lawyers) that facilitate their access to this institution and the use of fiduciary agreements in practice. However, in general, lack of clarity and regulation, as well as unawareness by some potential beneficiaries of this institution, keep the use of fiduciary contracts at a low level in practice.

ALTERNATIVE DISPUTE RESOLUTION

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Abstract
Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation. Despite historic resistance to ADR by many popular european parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute. Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (hereinafter „Directive 2013/11/EU") aims to ensure a high level of consumer protection and the proper functioning of the internal market by ensuring that complaints against traders can be submitted by consumers on a voluntary basis, to entities of alternative disputes which are independent, impartial, transparent, effective, simple,quick and fair. The present study is trying to present broadly how are all this transposed in the Romanian legislation.

CONSIDERATIONS REGARDING THE INCLUSION OF PERSONS WITH DISABILITIES ON THE ROMANIAN LABOR MARKET

Lecturer Aracsia-Magdalena BENTIA
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Abstract
1. Objectives of the study The study aims to analyze the issue of the inclusion of people with disabilities in the labor market in Romania and to provide legislative solutions. 2. The research methods used are the qualitative research method and the observation method. 3. Results and implications of the study 1. The conclusion of partnerships between educational institutions and employers, in order to provide the conditions for a real practice for young people with disabilities in different sectors of activity. 2. In order to include people with disabilities on the labor market, for effective communication with them, I propose introducing the obligation to create unique posts in each institution and public authority for interpreters of the mimic-gesture language. 3. Creating the legal framework for the introduction of the obligation to set up unique posts in each public institution for interpreters of the mimic-gestural language 4. Creation of a database of people with disabilities to be managed by the National Authority for People with Disabilities, in collaboration with the National Agency for Employment.

THE LOYALTY AND NON-COMPETITION OBLIGATION OF THE DIRECTORS AND ASSOCIATES OF TRADING COMPANIES

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Assistant professor Gabriela FIERBINȚEANU
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Abstract
Being the manager of another's assets is no longer a simple contractual relationship under the current circumstances. The duty of diligence, honesty and loyalty of the administrator towards the beneficiary receives a legal consecration in the new Civil Code as a sign that the general rule evolves sometimes anticipating the need to change the special rule. In this context, to talk about the loyalty of administrators considering the provisions of the Law no. 31/1990 on societies and about the tripartite partnership-administrator-associate-trading company from the perspective of diligence and honesty, why not extending the discussion to so-called fiduciary duties is a welcome approach for the authors, having in mind that there is sometimes a fierce demarcation line between negligence and fraud and inherent business risk. Another aspect that this article proposes for analysis is that of the noncompetitive obligation of associates from the perspective of the Civil Code and Law no. 31/1990 on societies, given that, although specific elements of competition are found in all areas and sectors of activity and between the different subjects of the legal relationship, it is undoubtedly that the most fierce competition is to be found in commercial activities, being exercised either by businesses operating on the relevant market or by those who coordinate them .

RISKY BUSINESS: DISTRIBUTION OF RISK IN CONTRACTS FOR INTERNATIONAL SALES OF GOODS

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Legal adviser Cristina OLARIU
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Abstract
Identifying the best legal and business solution, especially in the case of an international sale of goods contract can become a real challenge for the parties involved. In addition to CISG, which generally governs these type of contracts, choosing the Incoterms option which best suits the needs of the parties involved can represent the significant difference between a successful business or the appearance of disputes between the parties. Which are the options for the distribution of risks? What should the seller and the buyer pay special attention to? How does the CISG and Incoterms harmonize with the national legislation regulating the risk in the sale contract? Our objective in this paper is to present the scenarios and find possible solutions to all these issues.

HOMEWORKING / TELEWORKING - ATYPICAL FORMS OF WORK BETWEEN UTILITY AND PRECARIOUSNESS

PhD. student Mihaela-Emilia MARICA
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Abstract
The literature centered on the investigations into the implications of this activity sector, reveals that – in addition to the usual risks entailed by most atypical work arrangements, some of them even increased in the case of homeworkers and teleworkers – they are further exposed to the risk of social isolation, because teleworkers lack a direct social contact with their peers, colleagues and organization members. The vulnerability of homeworkers is compounded by labor legislation, as this category of workers face major difficulties in the complete, effective exercise of some rights, although the law acknowledges the equality in rights and treatment between the employees with standard work contracts, and the employees opting for flexible

work opportunities. In most cases, the remuneration and social benefits granted to the latter, are lower than the payment and social benefits offered for the same type of work, to an employee working on the company's precincts.

SHARES SELLING UNDERTAKINGS. CONSIDERATIONS ON PUT OPTION, CALL OPTION, DRAG ALONG AND TAG ALONG CLAUSES

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Abstract
With the entry into force of the New Civil Code, contract undertakings have been explicitly regulated, such aspect having significant implication on the shares seling undertakings, as they have been imported from common-law systems under the name of put option, call option, drag along and tag along. If under the old Civil Code the regulation of these clauses was made only by conventional means, under the New Civil Code their operating parameters have acquired a legal source. Therefore, the present study aims to analyze the share selling undertakings by reference to the provisions of the New Civil Code, while pursuing (i) the determination of their legal nature, (ii) the identification and qualifications of the parties' rights and obligations derived their from, (iii) their effects, and (iv) the sanction of their non-observance. Therefore, we will use the comparative research method to identify the differences of application between these mechanisms and the differences of perspective from the common-law and continental legal systems. In conclusion, we will identify the practical issues that may be encountered by deploying these mechanisms.

"FIRST DAY IN COURT" AND THE NEW CIVIL PROCEDURE CODE

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Abstract
The first day of appearance was a procedural institution of decisive significance for the civil process, being recognized and defined as such by the old Code of Civil Procedure. Its importance was discussed and analyzed by all law theorists and its role was highlighted by the decisions of the Supreme Court. In this context, it seems to us inexplicable and, above all, regrettable, that in the new procedural provisions the legislator considered it appropriate to refer only to the "first term of trial". This choice generates, in our opinion, both confusion and a "legislative void" that must be artificially remedied by the courts. The present paper will make a few judgments about the opportunity to reintroduce the first day of appearance, analyzing it compared to what the current regulation of the first term of judgment is.

INDIVIDUAL PERSONS INSOLVENCY LAW

Lecturer Ileana Adriana DEAC
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Abstract
Law no. 151/2015 on insolvency of natural persons was adopted by the Parliament and published in the Official Gazette no. 464 of 26 June 2015, with the entry into force of 31.12.2015. However, at this time, the law did not apply, the entry into force, being prolonged for 01.01.2018. The legal approach aims to analyze the legal framework and the reasons underlying the regulation of this legal institution, the presentation of the conditions for opening the insolvency procedure to natural persons, the legal procedure itself, the insolvency commissions and the other entities involved in this procedure. The paper also seeks to explain the reasons behind the repeated delays in the application of this procedure, to identify the problems and the unclearities that make this law inapplicable and to provide solutions de lege ferenda.

PROLEGOMENA TO THE STUDY OF HERALDIC INSIGNIA: FROM THE MEDIEVAL COAT OF ARMS (XIV-XVI CENTURY) TO THE HERALDIC INSIGNIA OF INSTITUTIONS AND SOCIETIES IN CONTEMPORARY LAW. EVOLUTION, LEGAL REGIME, EFFECTS, LEGAL PROTECTION, PROHIBITIONS

Associate professor Claudiu Ramon D. BUTCULESCU
Spiru Haret University, Romania
Institute of Legal Research "Acad. Andrei Rădulescu" of the Romanian Academy

Abstract
This paper addresses certain issues regarding the legal status of heraldic symbols used by institutions and companies, in the framework of contemporary law, viewed from a historical perspective. The analysis starts with the legal regime of the medieval crests and coat of arms, and continues with the analysis of the rights that legal entities can exercise over the heraldic insignia, especially contemporary institutions and companies. The rights stemming from the use of heraldic insignia by institutions and companies are analyzed also from a legal perspective, both in terms of the ownership of such symbols, and from the perspective of the rights of use, which companies or institutions may have concerning with respect to these heraldic signs. To the same purport, the analysis concerning the continuity of legal rights over heraldic insignia is briefly studied, starting from the historical sources of the heraldic elements to the current civil law and regulations. Also, the article presents proposals for a law on the protection of heraldic elements related to the protection of historical crests and symbols, as well as a comparative analysis of European and international legislation on this matter. At the end of the paper, short conclusions are presented, in which the author seeks to clarify the legal status of heraldic insignia that can be used by legal persons, as well as certain prohibitions and legal safeguards.

RULES ON ESTABLISHMENT OF THE FAMILY COUNCIL

PhD. student Mihai Adrian DAMIAN
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Abstract
If the tutor is the central figure of the tutelage, in order to control and supervise the tutelage function, there is an another mechanism intervenes - the Family Council. The Family Council was governed by the 1864 Romanian Civil Code under the influence of the Napoleon Code and was the supreme body of tutelage. Currently, this legal institution is reintroduced into the New Civil Code and regains its regulation in Article 124-132.

ASPECTS REGARDING THE LEGAL REGIME OF AUTHORIZED NATURAL PERSON IN THE LIGHT OF THE AMENDMENTS BROUGHT BY LAW NO. 182/2016 FOR THE APPROVAL OF GOVERNMENT EMERGENCY ORDINANCE NO. 44/2008 ON THE CONDUCT OF ECONOMIC ACTIVITIES BY AUTHORIZED NATURAL PERSONS, INDIVIDUAL ENTERPRISES AND FAMILY ENTERPRISES

Assistant professor Radu – Ștefan PĂTRU
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Abstract
The legal framework regulating the legal regime of the authorized natural person has been modified relatively recently by Law no. 182/2016 for the approval of Government Emergency Ordinance no. 44/2008 on the conduct of economic activities by authorized natural persons, individual enterprises and family enterprises. The amendments brought by the mentioned normative act concern the issues related to the authorization of the authorized natural persons, the number of employees, but also in the field of taxes and duties. In the present study, we will analyze the impact of new legislative changes on the business environment for authorized natural persons.

THEORETICAL AND PRACTICAL REFERENCES REGARDING THE APPLICABILITY OF THE EMPLOYER'S OBLIGATION TO INFORM THE EMPLOYEE

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Abstract
The obligation to inform the employee is one of the most important obligations of employers in labor relations. Regulated by art. 17 - 19 of The Labor Code, the employee's obligation to inform the employee is the subject of controversy in doctrine and practice. In this study we will analyze the applicability of the information obligation and make proposals for lege ferenda on the basis of the arguments presented.

LEGAL SUBORDINATION - CRITERION APPLICABLE TO CONTRACT RE-QUALIFICATION (AS AN INDIVIDUAL WORK)

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Abstract
The International Labor Organization adopted, in 2006, Recommendation no. 198, synthetically describing the features of a working relationship. Thus, work done in a labor relationship must meet certain requirements, namely: to be performed according to instructions and under the control of another person; to involve the integrator of the organization in the organization of an enterprise; be executed exclusively or principally for the account of another person; be personally fulfilled by the worker; to be carried out in accordance with a determined timetable and at a specific place or accepted by the beneficiary of the work; have a given (predetermined) duration and show some continuity; to assume that the worker is at the disposal of the other person; to involve the beneficiary in the provision of equipment, materials, energy, as the case may be. In its turn, the High Court of Cassation and Justice stated in Decision no. 574/2011 that - in order to qualify a contract as a work - there must be three elements, namely: performance of the work as the primary purpose of the contract; remuneration of the work done; the existence of a subordination report. In the absence of the subordination report, the contractual relations agreed by the parties are not objectively reflected in an employment relationship, but remain only in the sphere of civil law.

CONSIDERATIONS ON THE CONDITIONS UNDER WHICH THE EMPLOYER MAY MONITOR THEIR EMPLOYEES AT THE WORKPLACE

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Abstract
Recently, the European Court of Human Rights in the case Bărbulescu v. România has ruled that the national courts did not ensure respect for the right to privacy in the employment relationship of an employee who had been disciplinary dismissed for using the internet and an IT application in the personal interest during the working hours, dismissal which was based on evidence obtained after the employer had monitored the employee's electronic communications. The Court concluded that the national courts failed to strike a fair balance between the employee's right to private life at the workplace and the employer's right to supervise and control the work of his employees. Thus, the Court found a violation of Article 8 of the European Convention of Human Rights. In its decision, the Court specified the criteria to be applied by the national authorities in order to achieve a balance between the rights of the two parties (employee-employers). The herein study aims to briefly analyze the case and to establish the concrete elements that employers should consider if they intend to monitor their employees in order not to violate their right to private life at the workplace of the latter.

REGULATION REGARDING THE RECEPTION OF THE CONSTRUCTION WORKS AND THE CORRESPONDING INSTALLATIONS

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Abstract
The new Regulation regarding the reception of construction works and corresponding installations, approved by Government's Decision no. 347/2017 ("Regulation 2017") has general applicability for all construction works for which there is an obligation to obtain a building permit. Regulation 2017 brings significant changes and clarifications expected by the real estate sector regarding: (i) the composition of the commissions involved in the reception procedure, (ii) the role of the site supervisor who thus gains significant participation in the reception procedure, and (iii) the participation of the public authorities' representatives at the reception, having the veto right on the decision of the reception commission upon the completion of the construction works. Another element of novelty brought by Regulation 2017 is the possibility to do the reception upon the completion of the construction works, respectively the final reception for parts / objectives / sectors of or from the building, if they are distinct/ independent from a physical and functional point of view. Thus, the new regulation facilitates the procedure of authorizing investment objectives and the costs of the process. The partial reception is another innovation brought by the Regulation 2017 in support of the investor, who can thus take over a part of the construction, at a certain stage, and obtain its registration with the Land Book.

'GREEN' OBLIGATIONS REGARDING NEW CONSTRUCTIONS AND THEIR IMPACT UPON THE REAL-ESTATE MARKET

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Abstract
The fight for reducing green gas emissions and energy dependency requires the application of additional obligations for new constructions. From this perspective, after 31 December 2020 building permits for new constructions in the private sector shall be issued only if their energy consume is close to zero. Additionally, the recovery level of non-dangerous waste resulting from construction and demolition activities must reach until 31 December 2020 a percentage of 70%. These additional obligations will have a direct impact upon the construction price and will certainly influence the real-estate market.

THE MAIN NOVELTIES AND IMPLICATIONS OF THE NEW GENERAL DATA PROTECTION REGULATION

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Abstract
Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) - GDPR will become applicable beginning with 25.05.2018. As a general characteristic, the regulations adopted at EU level, have direct applicability in all EU member states, and they are automatically integrated in the national legislation beginning with entry into force. Therefore, as of 25.05.2018, the GDPR provisions will be applicable and mandatory for all natural and legal persons that process personal data, including in Romania. Based on the above, GDPR brings a series of changes affecting all the involved parties (data subjects, data controllers, supervisory authorities). This article aims to present an analysis of the main novelties brought by the new regulation, and to present a comparison with the current regulation together with the practical implications of these changes in relation to the data subjects, data controllers, and supervisory authorities.

CONSIDERATIONS REGARDING THE RIGHTS OF EMPLOYEES WHO WERE DISMISSED UNLAWFULLY

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Abstract
The present study aims to analyze the consequences of the annulment of the employee's dismissal decision. These concern the employer's obligation to reintegrate the unlawfully dismissed employee and to provide compensation to him, which must include the indexed, increased and refurbished wages and other entitlements to which the employee would have benefited. In addition to these amounts, the employee is also entitled to claim damages for the moral or material damage suffered as a result of the dismissal decision. The content and the way of fulfilling the legal provisions that currently regulate the rights of the unlawfully dismissed employee are of particular importance from the perspective of both the employee and the employer. Thus, from the point of view of the employee, the lack of precisely defined content of his rights can easily give rise to abuse by the employer. With regard to the latter, failure to adequately fulfill its obligations may have drastic consequences, which may also be of a criminal nature. The study uses the logical, historical and experimental 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.