The Protection of the Status Filiationis in the Event of Surrogate Motherhood (Abstract)

THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH

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18th Annual International Conference on Law
12-15 July 2021, Athens, Greece

Edited by
Gregory T. Papanikos

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TABLE OF CONTENTS

(In Alphabetical Order by Author's Family Name)

Preface

This book includes the abstracts of all the papers presented at the *18th Annual International Conference on Law* (12-15 July 2021), organized by the Athens Institute for Education and Research (ATINER).

A full conference program can be found before the relevant abstracts. In accordance with ATINER's Publication Policy, the papers presented during this conference will be considered for inclusion in one of ATINER's many publications.

The purpose of this abstract book is to provide members of ATINER and other academics around the world with a resource through which to discover colleagues and additional research relevant to their own work. This purpose is in congruence with the overall mission of the association. ATINER was established in 1995 as an independent academic organization with the mission to become a forum where academics and researchers from all over the world could meet to exchange ideas on their research and consider the future developments of their fields of study.

It is our hope that through ATINER's conferences and publications, Athens will become a place where academics and researchers from all over the world regularly meet to discuss the developments of their discipline and present their work. Since 1995, ATINER has organized more than 400 international conferences and has published nearly 200 books. Academically, the institute is organized into 6 divisions and 37 units. Each unit organizes at least one annual conference and undertakes various small and large research projects.

For each of these events, the involvement of multiple parties is crucial. I would like to thank all the participants, the members of the organizing and academic committees, and most importantly the administration staff of ATINER for putting this conference and its subsequent publications together. Specific individuals are listed on the following page.

Gregory T. Papanikos
President

18th Annual International Conference on Law, 12-15 July 2021, Athens, Greece

Organizing & Scientific Committee

All ATINER's conferences are organized by the Academic Council. This conference has been organized with the assistance of the following academic members of ATINER, who contributed by reviewing the submitted abstracts and papers.

1. Gregory T. Papanikos, President, ATINER & Honorary Professor, University of Stirling, U.K.
2. David A. Frenkel, LL.D., Head, Law Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
3. Michael P. Malloy, Director, Business, Economics and Law Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.
4. Vladimir Orlov, Academic Member, ATINER & Professor, Herzen State Pedagogical University of Russia, Russia.

FINAL CONFERENCE PROGRAM
18th Annual International Conference on Law, 12-15 July 2021, Athens, Greece

PROGRAM

Monday 12 July 2021

10.00-11.00
Registration

11.00-11.30
Opening and Welcoming Remarks:

- **Gregory T. Papanikos**, President, ATINER.
- **David A. Frenkel**, LL.D., Head, Law Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
- **Michael P. Malloy**, Director, Business, Economics and Law Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.

11:30-12:00
Robert Smith, PhD Candidate, University of New England, Australia.
Title: *Fake News and the Convention on Cybercrime.*

12:00-12:30
Vladimir Orlov, Professor, Herzen State Pedagogical University of Russia, Russia.
Title: *Russian Legal Discourse.*

12:30-13:00
Norbert Varga, Associate Professor, University of Szeged, Hungary.
Title: *The Adaptation of the First Hungarian Legislation on Cartels.*

13:00-13:30
Mihaela Elvira Patraus, Associate Professor, University of Oradea, Romania.
Title: *Contractual Imprevision in the Context of the COVID-19 Pandemic.*

13:30-14:00
Marta Picchi, Professor, University of Florence, Italy.
Title: *The Protection of the Status Filiationis in the Event of Surrogate Motherhood.*

14:00-14:30
Ger Coffey, Lecturer, University of Limerick, Ireland.
Title: *A History of the Double Jeopardy Principle: From Classical Antiquity to Modern Era.*

14:30-15:30 Lunch

15:30-16:00
Lavinia Olivia Iancu, Lecturer, Tibiscus University of Timişoara, Romania.
Title: *Insolvency of the Natural Person and COVID-19.*

16:00-16:30
Michely Vargas Del Puppo Romanello, Professor and Lawyer, Pontifical Catholic

University of São Paulo, Brazil.
Title: *The Successory Rights of the Cryopreserved Embryo.*

16:30-17:00
Gabriela Amarante Brito, Lawyer, Brazil.
Title: *Parental Alienation: A Violation to the Rights of the Child and the Teenager.*

17:00-17:30
Micael Fernandes Gomes Dos Santos, Lawyer, Adventist University Center of Sao Paulo, Brazil.
Title: *Law, State and Religious Freedom in Brazil.*

17:30-18:00
Michael P. Malloy, Director, Business, Economics and Law Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.
Title: *Encountering Charles Dickens: The Lawyer's Muse.*

18:00-18:30
Elias Grivoyannis, Associate Professor, Yeshiva University, USA.
Title: *Computational Econometrics for Litigation Support in Employment Discrimination Cases.*

Tuesday 13 July 2021

11:00-11:30
Sule Sahin Ceylan, Assistant Professor, Marmara University, Turkey.
Title: *Duties and Responsibilities Beyond the Decades.*

11:30-12:00
Maria Luisa Chiarella, Associate Professor, Magna Graecia University of Catanzaro, Italy.
Title: *Platform Contracts: Legal Framework and User Protection.*

12:00-12:30
Gayil Talshir, Senior Lecturer, The Hebrew University, Israel.
Title: *When Law Becomes Politics.*

12:30-13:00
Máté Pétervári, Senior Lecturer, University of Szeged, Hungary.
Title: *The Historical Roots of the Hungarian Bankruptcy Law.*

13:00-13:30
Rutvica Rusan Novokmet, Postdoctoral Researcher, University of Zagreb, Croatia.
Title: *The Future of the Application of the Genocide Convention – Case Study: Bosnia and Herzegovina v. Serbia, Croatia v. Serbia and Gambia v. Myanmar.*

13:30-14:00
Claudio Sarra, Associate Professor, University of Padova, Italy.
Title*: Lost in Translation. Dogmatic, Methodological and Philosophical Issues of Contractual Automation.*

14:00-14:30
Martyna Kasperska, PhD Candidate, University of Silesia in Katowice, Poland.
***Title**: Personality Rights – A Universal Tool for the Recovery of Non-Pecuniary Loss.*

14.30-15:00
Aleksejs Jelisejevs, PhD Student, Turiba University, Latvia.
***Title:** Crucial Issues with Legal Protection of Consumers' Human Rights when Unilateral Closing Accounts by Banks.*

15:00-15:30 Lunch

15:30-16:00
Victoria Teles Valois de Amorim, Lawyer, Adventist University Center of Sao Paulo, Brazil.
***Title:** The Problem of Syria Refugees in Brazil in Face of the Protection of Human Rights.*

16:00-16:30
Angélica María Burga Coronel, Professor, Autonomus University of Baja California, México.
***Title:** The Proportionality Principle as Control Criterion of the Legitimate Restrictions: The Inter-American Court of Human Rights Standards.*

16:30-17:00
Larissa Pochmann da Silva, Professor, Estácio de Sá University, Brazil.
***Title:** Transnational Class Actions: Perspectives of Recognition and Enforcement from America and Europe.*

17:00-17:30
Jose Geraldo Romanello Bueno, Professor and Lawyer, Mackenzie Presbyterian University of São Paulo, Brazil.
***Title:** Civil Liability for Loss of Working Time.*

17:30-18:00
Georgios Zouridakis, Research Fellow, ATINER.
***Title:** Derivative Actions, Corporate Governance and Economics: Understanding the Implications of Shareholder-Led Litigation Mechanisms.*

18:00-18:30
Carol Njoku, Researcher, Golden Gate University School of Law, USA.
***Title:** Sexism in International Refugee Law: A Case for Human Rights Assessment.*

Gabriela Amarante Brito
Lawyer, Brazil

Parental Alienation: A Violation to the Rights of the Child and the Teenager

This paper is due to the increase in the dissolution of families, the growing disagreement, the bad relationship between ex-couples and, consequently, the difficulty in prioritizing the child's well-being in relation to the parents' interests. It aims to analyze the phenomenon of Parental Alienation, defining it and observing the main reasons for its occurrence and what are the psychological and legal consequences to which all those involved are exposed, whether the alienator himself, the alienated parent or the minor. It also aims to present it as a violation of the rights of children and adolescents. It also analyzes the person of the alienator, discussing their main characteristics and behaviors, in order to find circumstantial patterns that lead to such an achievement. Furthermore, it seeks to explore and identify the situations or actions that constitute parental alienation. It always establishes that the best interests of children and adolescents are paramount. It also presents ways in which it is possible to prevent the occurrence of Parental Alienation. The present work is carried out by means of a qualitative approach that seeks the realization of the law in the best interest of children and adolescents, using bibliographic and field research for its elaboration, in order to clarify Parental Alienation as a violation of the rights of children and adolescents, as well as the psychological and legal consequences that are caused by this feat.

Angélica María Burga Coronel
Professor, Autonomus University of Baja California, México

The Proportionality Principle as Control Criterion of the Legitimate Restrictions: The Inter-American Court of Human Rights Standards

This paper focuses on the issue of allowed restrictions to fundamental rights set by the American Convention on Human Rights in order to permit the rights coexist in harmony. In this context, States may exceptionally impose restrictions on some fundamental rights provided they meet specific requirements that prevent a right from being violated. In the verification of compliance with these requirements of legitimacy, the principle of proportionality has been assumed as the control criterion used by the Inter-American Court of Human Rights. The aim of the investigation is analyze how the Court applies the principle of proportionality to verify if the imposition of restrictive measures by the States complies the legitimacy requirements imposed by the Convention. The work of the Court is of utmost importance since the jurisprudential standards developed are meant to provide guidance to the States to fulfil their obligation of applying restrictive measures that cause no harm to the protected rights.

Maria Luisa Chiarella
Associate Professor, Magna Graecia University of Catanzaro, Italy

Platform Contracts: Legal Framework and User Protection

Nowadays digital contracts are an increasingly widespread reality especially in times of lockdown and this paper aims to examine how users and consumers transactions find place in digital markets and the legal framework for platform contracts. There are many issues to be considered: contract requirements, users and consumers protection and the peculiarities of sharing economy. The Regulation (EU) 2019/1150 (on promoting fairness and transparency for business users of online intermediation services) is a general normative basis having the purpose of avoiding the abuse of bargaining power against business users. It aims to ensure the fair and transparent treatment of business users by online platforms, giving them more effective options for redress when they face problems and creating a regulatory environment for online platforms within the EU. The EU system lacks of specific rules for P2P transactions. In this sector, the Communication of EU Commission of 2 June 2016 on collaborative economy offers useful clues. In short, the paper summarizes the main problems and profiles of legal relevance of such important and wide issue.

Ger Coffey
Lecturer, University of Limerick, Ireland

A History of the Double Jeopardy Principle: From Classical Antiquity to Modern Era

Protection against retrials for the same, or substantially the same, criminal offence is an entrenched fundamental right in democratic states. The principle of double jeopardy in common law jurisdictions expressed by the special pleas in bar autrefois acquit (former acquittal) and autrefois convict (former conviction) was firmly entrenched by the post-medieval period in common law adversarial systems of justice. The corresponding principle of ne (non) bis in idem (no one shall be twice tried for the same offence) in civil law inquisitorial jurisdictions foreshadowed the development of the common law principle.

The antiquity of the principle can be traced to classical Greek and Roman laws. The principle was possibly based on utilitarian or deontological precepts from its development during the classical period and subsequent inception into the common law. This is especially true in consideration of the severity of punishments imposed on conviction for most offences in addition to the advantages the prosecution had in terms of substantive criminal law and procedure, to the detriment of the accused.

An evaluation of the historical development of double jeopardy is essential for an understanding of the importance of this fundamental principle of criminal justice and procedure in contemporary criminal justice systems. This evaluation places the protection in an historical context thus reflecting the criminal law, trial procedure, social and political climate shaping the development of the principle.

The analysis provided herein suggests that the double jeopardy principle was firmly established as a principle of the common law by the late medieval period. The hypothesis is that the principle was firmly established by the late 18th century in common law jurisdictions having developed through influences from continental civil law and the canon law of the church. A doctrinal analysis of common law jurisprudence on the development of the principle reveals significant developments following the Restoration of the monarchy in England. The apparent incremental development of this fundamental principle of criminal justice can be explained in terms of the deficiencies in medieval criminal procedure, prejudices and practices of medieval trial procedure and punishments imposed on convicted offenders. This was necessitated at a time when criminal procedure did not necessarily resolve accusations on the merits of the case but rather according to the

power and resources available to the prosecution authorities as opposed to the adverse position of the accused in the criminal justice process throughout the medieval period. Moreover, the medieval criminal trial was rife with procedural and substantive deficiencies to the detriment of the accused.

This paper critically evaluates the processes by which the double jeopardy principle developed as a procedural defence. Whereas a comprehensive historical analysis of the development of double jeopardy through ancient Greek law, Roman law, Anglo-Saxon law and the influence of Canon law is beyond the scope of this paper, it is clear that the protection has ancient origins. Through a doctrinal examination of landmarks in the development of the principle, the paper compares and contrasts various theoretical underpinnings in the development of the contemporary application of principle against retrials for the substantially the same criminal offence.

Micael Fernandes Gomes Dos Santos
Lawyer, Adventist University Center of Sao Paulo, Brazil
&
Michely Vargas Del Puppo Romanello
Professor, Pontifical Sao Paulo Catholic University, Brazil

Law, State and Religious Freedom in Brazil

This research seeks to discuss the coexistence of the State and Religious Freedom, also observing the position of Law in this delicate relationship. In other words, since the Brazilian Constitution defends freedom and the free exercise of religion in its article 5, item VI, it is necessary to contest the following question: Can the Brazilian State interfere in the freedom of individual belief, or can it give legal guarantees for that freedom to be assured? Through the deductive method and through the analysis of recent judgments of the Brazilian Supreme Federal Court in the case of extraordinary appeals, the limits of the State of action or inaction in relation to religious freedom will be supported, concluding that the State must always cherish the sovereignty of secularity and the observance of the freedom to believe.

Elias Grivoyannis
Associate Professor, Yeshiva University, USA

Computational Econometrics for Litigation Support in Employment Discrimination Cases

The objective of this paper is to show how computing the odds ration using qualitative limited dependent variable Logit econometric models can enrich the conventional odds ratio analysis in employment discrimination cases. This paper will try to show that the odds ratio is a very powerful instrument of measuring discriminatory treatment in employment personnel decision outcomes for the following three reasons. First, they have a task relevant interpretation. Second, they quantify the relationship between two binary ("yes or no") variables and even enable us to compute confidence intervals for such relationships. Third, they enable us to examine the effects of other variables on that relationship, using logistic regression. Such models could successfully be used in employment discrimination cases for litigation support.

Lavinia Olivia Iancu
Lecturer, Tibiscus University of Timişoara, Romania

Insolvency of the Natural Person and COVID-19

Considering that since 2009 draft normative acts have been submitted to the Romanian Parliament, for regulating the insolvency of the natural person, the adoption of the law into 2015 and the entry into force in 2018 represents an indisputable progress but also an entry into normality in the context that all EU member states already had legislation in this area. Three years after the entry into force of the insolvency of the natural law, we can say that the results anticipated by the legislator are far from the reality. The year 2020 characterized by the devastating effects of COVID-19, affected both individuals and legal entities. If the impossibility of overcoming difficult situations by legal entities leads to their deregistration, as far as natural persons are concerned, their disappearance due to the difficulties cannot be taken into account, they must continue their existence with overcoming the situation. Accessing the insolvency procedure of the natural persons is the solution that can be accessed by those in financial difficulty.

Aleksejs Jelisejevs
PhD Student, Turiba University, Latvia

Crucial Issues with Legal Protection of Consumers' Human Rights when Unilateral Closing Accounts by Banks

Large-scale bank account closure, so-called "de-risking", has acquired a systemic character and become a real public problem. While the cause of banks' behavior could be the result of a complex combination of factors, money laundering risks clearly prevail. Legal rules allow banks, like any other private business, entitled to choose their customers. Although the EU authorities have attempted to protect consumers' interests from arbitrary actions of banks, including the directive guarantee of access to the payment services via accounts with basic features, the human rights of the consumer, who has been rejected by the bank, are running into an impasse of the formal application of the legal norms that allow them to terminate their contractual relationships with a customer as long as they give proper notice.

In order to overcome the above collision, this study proposes a doctrinal assessment of consumer's interests that should limit the bank's right to unilaterally withdraw from the contract by the systemic teleological interpretation of regulating rules in combination with the general civil principle of good faith. By analogy with the original source of the problem, this tool has been called the "Good Faith-Based Approach". On the whole, this analysis is inherently applicable to any national legal system transposing EU rules with respect to this matter, but its ground refers to the legislation, legal doctrine, and case law of Latvia.

Under the general principle of good faith, everyone should exercise his subjective rights considering the reasonable interests of others. However, when unilateral closing the consumer's account due to de-risking, his interests are not only ignored by the bank at all but there are serious violations of the consumer's human rights, including respect for his private life and presumption of innocence.

As a matter of fact, de-risking stigmatizes discarded consumers as being involved in criminal activity without a court conviction. As a result of the unfair account closure, both the consumer's social and psychological integrity can suffer. His rights to establish and develop relationships with other human beings and the outside world and to respect for reputation are in jeopardy that could be serious material consequences as well.

Therefore, in view of the positive obligations of states under the European Convention on Human Rights, this research shows that the

consumers' conflicting interests should have priority in legal protection until proven his real money laundering and terrorist financing involvement. Some restrictions for the consumers' fundamental rights could be considered justifiable to prevent money laundering for preventive purposes as long as the business relationship with the bank continues. However, when rupturing contractual relations within de-risking, only close adherence to the good faith can guarantee that the bank's rights are not used by the bank formally and unreasonably, that is, against the regulating sense, meaning, and goals or contrary to the general idea of law.

Martyna Kasperska
PhD Candidate, University of Silesia in Katowice, Poland

Personality Rights – A Universal Tool for the Recovery of Non-Pecuniary Loss

As society develops, the concept of personality rights and their legal protection gains significance over the years. Naturally, this concept is changing with the society, and it should protect new personal interests against infringement. At the same time, there are reported instances of granting legal protection with doubtful legal justification. In Poland, many commentators and scholars point out that the courts, in some cases, seem to use the concept of personality rights as a universal tool in order to compensate for nearly any mental distress. The purpose of this work is to display interesting examples of this "search" for new personality rights as tools to compensate the plaintiffs for non-pecuniary damages and the controversial cases of granting non-pecuniary damages based on questionable legal justification. In the paper, I will try to address the question of how to understand the notion of non-pecuniary loss and whether the courts try to expand its meaning in order to grant legal protection to plaintiffs. The analysis of this issue will be made from the Polish law perspective with some comparative remarks. As the problem is complex and varies depending on the jurisdiction, this paper will not exhaust the subject, and it should be treated as a general illustration of the problem.

Michael P. Malloy
Director, Business, Economics and Law Division, ATINER &
Distinguished Professor & Scholar, University of the Pacific, USA

Encountering Charles Dickens: The Lawyer's Muse

This presentation explores the themes of the practical impact of law in society, the life of the law, and the character of the lawyer (in both senses of the term), as reflected in the works of Charles Dickens. I argue that, in creating memorable scenes and images of the life of the law, Charles Dickens is indeed the lawyer's muse. Dickens – who had worked as a court reporter early in his career – outpaces other well-known writers of "legal thrillers" when it comes to assimilating the life of the law into his literary works. The centerpiece of in this regard is not A TALE OF TWO CITIES or even LITTLE DORRIT, though these would be the obvious choices. Rather, at the heart of this presentation is an extended study and analysis of BLEAK HOUSE. The novel is shaped throughout by a challenged and long-running estate case in Chancery Court, and it is largely about the impact of controversy on the many lawyers involved in the case. It has all the earmarks of a true "law and literature" text – a terrible running joke about chancery practice, serious professional responsibility issues, and a murdered lawyer.

Carol Njoku
Researcher, Golden Gate University School of Law, USA

Sexism in International Refugee Law: A Case for Human Rights Assessment

Despite the massive outcry to end gender-based violence, human rights violations against women have remained pervasive in domestic and international arena. Yet, women fleeing gender- related persecution receive minimal protection because of the interpretation of gender as being too broad for refugee protection or that the refugee law has no intention to protect claims on gender. Worse still, burdens posed by contemporary influx of migration, and clash between political interest and international obligations cause greater hardships for refugees especially women. This study traces the challenges of gender-based protection to the historical events leading to the development of international refugee law (IRL). Its argument demonstrates that the 1951 Convention Relating to the Status of Refugee and its 1967 Protocol are framed from male-dominated experiences—race, religion, nationality, political opinion and membership in a particular social group—following the events of World War II. Regardless of the dreadful sexual crimes committed against women because of their gender/sex, the 1951 Convention excluded women's experiences from the criteria for protection. Seventy years after, women refugees who make claims on gender continue to battle with strict judicial requirements of proving viability to the protected grounds. In some cases, domestic courts trivialize gender-based persecutions (GBPs) as private affairs and lacking in nexus. Recurrently, consequences arising from gender-insensitive determinations have put many female asylum seekers into double jeopardy and harsh conditions.

This paper examines case laws from the US jurisprudence the adjudications of gender-based persecutions as "personal," and lacking in nexus grounds for asylum. It claims that the exclusion of sex/gender as ground for refugee protection limits the chances of surrogate protection for women refugees when such protection are denied by from their states. Exclusion of women's experiences from the legal framework of refugee protection constitutes gender discrimination thus, perpetuates inequalities and female vulnerabilities. Centering on this premise, my study confronts the Convention's protective grounds as obsolete, male-centered, and unsustainable in the light of current refugee needs. Therefore, I make recommendations for the re-conceptualization of international refugee law to reflect its avowed

principle of equality and nondiscrimination and to reflect the contemporary needs of refugees.

Vladimir Orlov
Professor, Herzen State Pedagogical University of Russia, Russia

Russian Legal Discourse

Due to the non-recognition of the origin of the business law in the commercial law, or, the law merchant, grown out of the customs and usages of merchants that existed before the emergence of law itself, and which, even in the process of formalizing the law into the legislation, characteristic for the continental law, in respect of commercial activities that introduced its public regulation, has reserved its self-regulatory and dispositive nature, the Russian legal discourse is quite different to what is generally represented as the Western legal discourse. Although Russian business law has been developed under the influence of Western law, the idea of the legislatively established legal surveillance of business activities, where written law is regarded as a progressive means of regulation, plays still an important role, and the breach of the law requirements is a sine qua non condition for civil liability (for damages) in Russia.

Mihaela Elvira Patraus
Associate Professor, University of Oradea, Romania

Contractual Imprevision in the Context of the COVID-19 Pandemic

The new realities require a revitalization of the legal system to overcome the effects of the COVID-19 pandemic. The current health crisis is, at the same time, a challenge not only for public authorities, but also for the scientific community and legal practitioners, concerned with finding viable solutions for the adaptation of legal institutions.

For the legal system, the contract is an essential factor from a theoretical and practical point of view, an indispensable element for the sphere of private law; it is an essential piece of evidence that lawyers will support in the face of new challenges posed by the current pandemic context. In this article we have in view an objective analysis of the contractual contingency, starting from the jurisprudential consecration that was conferred under the previous regulation and until the introduction of this institution in the national legislation with the entry into force of the new Romanian Civil Code in 2011.

We intend to present a brief retrospective on the theory of imprevision and will discuss the regulation found in national law, as well as the existence of this institution in comparative law. In a dynamic social and economic context, it is essential to clarify the relationship between the binding force of contracts and the possibility of invoking imprevision, in situations where certain changes affecting the contractual balance occur in the performance of obligations.

At the same time, as a case study, we will try to answer the question whether this institution finds its applicability in the most debated issue at legal, national and international level in the current period, namely the effects on contractual relations, generated by the COVID-19 pandemic and the measures taken by public authorities to limit the effects of the virus on human health. In the sphere of performance of contractual relations, in progress at the time of the pandemic, a multitude of controversies have been created, regarding the possibility of invoking, as the case may be, force majeure, fortuitous event or imprevision, and in this article we will highlight to what extent the parties have these remedies at hand.

Last but not least, the study will highlight the jurisprudential orientation due to the significant changes suffered in the current social and economic context amid the COVID-19 pandemic, respectively if the institution of imprevision comes to help the contracting parties to save

the contracts concluded before the pandemic which have been affected in the context of the measures and restrictions taken by each state.

Máté Pétervári
Senior Lecturer, University of Szeged, Hungary

The Historical Roots of the Hungarian Bankruptcy Law

Hungary was the part of the Habsburg Empire until 1848 in the 19th century. But the Hungarian legal system was independent from the Austrian Empire because private law and criminal law were determined by the Hungarian acts and the customary law. The first Hungarian Bankruptcy Act was passed by the National Assembly in 1840 whose aim was the boosting of the Hungarian economy. The Hungarian political elite wanted to tempt the foreign investors in the country with the appropriate commercial regulations therefore the model of the bankruptcy procedure was the German bankruptcy law.

Hungary lost its independence after the Hungarian Revolution and War of Independence of 1848, and the Habsburg emperor prorogued the working of the National Assembly. This period was the neoabsolutism in which the Hungarian legal system was unified with the Austrian. In 1861, Franz Joseph I. gave back the independence of the country and the Hungarian private law and criminal law were restored on the basis of regulation in 1848.

According the Austro-Hungarian Compromise Hungary and Austria became a realunion consequently the monarch was common, and both had common affairs (military, foreign affairs and finance which covered these affairs). But Hungary and Austria cooperated in the economic affairs as well. Hungary regained the political independence with this agreement, and the Hungarian legislation worked again after 1867. The Hungarian political elite desired to give a boost to development of the economy again. The one of the suitable means to revive the economy of the Hungarian government was the forming of the appropriate legal regulation concerning to the commercial law. In 1875 the Hungarian National Assembly passed the first Hungarian Commercial Code, which supplemented by a new Bankruptcy Act in 1881. This Act remained in force until the socialism after the Second World War. The codificator of this bankruptcy act was István Apáthy who examined the international bankruptcy rules during the making the draft. The key models were the Gerrman acts and the Austrian procedure. It was not surprising the Hungarian legal thinking orientated to the German models in this period. It was efficient solution because Hungary had a vivid economical connection with Germany and Austria.

I would like to present the Hungarian codification in the connection of bankruptcy law in my lecture. I want to examine some cases from the

Royal Court of Appeal of Szeged in the Interwar Period. I will compare these paragraphs with the German acts, and I would like to reveal the relationship between the German and Hungarian bankruptcy law. I use archive materials, documents of National Assembly, German and Hungarian literature during my research.

Marta Picchi
Professor, University of Florence, Italy

The Protection of the Status Filiationis in the Event of Surrogate Motherhood

Surrogate motherhood is an issue widely debated in jurisprudence, from a variety of standpoints: moral, philosophical, ethical, sociological, and juridical.

In fact, surrogacy calls into question the role of women and the meaning of motherhood – which is to say the original bond between the person coming into the world, and the person bringing someone into the world. Juridically, this phenomenon touches on various values and interests, all worthy of protection: above all, the interest of the child conceived through surrogacy in knowing his or her origins, but also in being accepted within society with no conditioning connected to his or her birth, and to the fact that his or her abandonment had already been planned prior to conception.

However, like all complex issues, given the multiple interests involved and its many implications, it is destined to continue prompting new reflections. It is therefore a subject that lawmakers have struggled or been slow to deal with, also because the possibilities for surrogacy that can take place differ greatly: consequently, doubts as to legitimacy would arise if a single juridical regime were adopted.

These difficulties are heightened by the lack of regulation on an international level: it is clear that a total absence of rules raises additional complications when intended parents in a country that does not permit or that strongly limits surrogacy, in order to realize their parenthood plan, visit another country where surrogacy is allowed.

The latest rulings by the European Court of Human Rights and by domestic courts show the diversity in balancing the best interests of the child with the other interests and values worthy of protection.

This contribution aims to examine the current status of protection for the child born through surrogate motherhood, with the purpose of comprehending the necessary steps that have yet to be taken.

Larissa Pochmann da Silva
Professor, Estácio de Sá University, Brazil

Transnational Class Actions: Perspectives of Recognition and Enforcement from America and Europe

Many countries in Latin America and in Europe are still developing or improving their legislation. The expansion is happening with different procedures and provides a rich field for comparative and international law. On the other hand, transnational class actions are at least not unexpected in a global economy, where massification grows. Standard contracts affect multiple costumers, mass torts involve numerous victims and environmental problems affect communities as a whole. Injuries sometimes occur on a large scale crossing state boundaries. Thinking about legal culture, it is developed in that scene as a mash-up of the influence of local traditions of a country with different influences of legal doctrine and practices of the others. So, class actions spread with different models, especially considering who has standing, scope and remedies and opt in and opt out. And, in a globalized world, it frequently raises the need of the recognition and the enforcement of a class action from one country to another one to ensure that victims, irrespective of their economic situation and where they live, receive redress.

Based on the different models of class actions, the recognition and enforcement of a class action from one country to another is a main battleground. For example, since Morrison v. National Australia Bank [2010], United States federal courts refuse to recognize and enforce foreign class actions in the country. Canada is considered a relevant jurisdiction for the theme, based on the cases Silver v. IMAX [2013] and Kaynes v. BP P.L.C [2016], but both of the claims were just related to recognition and enforcement of U.S. proceedings. In Latin America, it is important to mention Petrobrás case, that is still pending in different courts. In Europe, two claims are on focus, the Shell case [2009] and the Converium case [2008]. And, in both, the proceeding did not benefit US residents, existing parallels proceedings in both jurisdictions in America and in Europe about the same injury. The recognition and the enforcement of a transnational class action could improve cross-border litigation, providing access to justice, judicial economy and reducing costs, ensuring that victims, irrespective of their economic situation and where they live, receive redress.

The study of recognition and enforcement of transnational class actions is based in doctrine, specially books and specialized articles recently published and case studies with a qualitative and quantitative

method, to analyse the implication of the findings in Latin America, North America and Europe to improve civil justice efficiency.

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Civil Liability for Loss of Working Time

The present paper seeks to highlight the importance of the time element in social relations, as well as hypotheses in which its violation reflects directly on the rights of the civil personality as a whole. Because of this, we will analyze the role of civil liability as an instrument of reparation for damages caused by the loss of useful time, as well as the need for an autonomous damage, in view of the moral or patrimonial damage that does not fully address the subject at hand. It will also be addressed in this study the theory of Consumer Productive Deviation, presented in parallel under the perspective of Brazilian Consumer Law. We will also analyze how the Brazilian jurisprudence and doctrine interpret situations in which there is an injury for loss of working time.

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The Future of the Application of the Genocide Convention – Case Study: Bosnia and Herzegovina v. Serbia, Croatia v. Serbia and Gambia v. Myanmar

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Duties and Responsibilities beyond the Decades

The concept of future generations indicates a continuous process of population. There is no exact moment when the existing generation exchanges places with its successors. In this sense, it is an artificial term that represents a classification of groups of people born during the same period. I prefer address four discrete groups of people: today's adults, today's children, people who are not yet born but are born before those alive today have died, and those people who are born after all those alive today have died. Limited to the purpose of this paper, I will consider the last three generations as future people. In addition, the young people who have already been born and those who have not yet been born can be considered our successors. It is generally accepted that our relationships with future generations are completely different from those with existing people. While we have enough power to influence their lives and make them better or worse off, they will not be able to change our lives in a similar way. The balance of power is so asymmetrical that we at least try to counteract the superiority of our contemporaries a little. In this context, intergenerational justice is a general term that refers to the duties and responsibilities shared between the state and civil society for future people. The importance attached to the rights or benefits of future people does not spring from an ordinary concern for their survivability. Every decision, legal or economic arrangement made in the context of public policy affects the interests of the future. In this paper, I will first analyze the main concepts that formalize the field of intergenerational relations. Then I will briefly explain two different views that deal with intergenerational justice: Rawls on intergenerational rights and utilitarianism. Before concluding, the responsibilities and duties that we owe to them -with the idea of establishing a protective space for future people- will be discussed.

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Lost in Translation: Dogmatic, Methodological and Philosophical Issues of Contractual Automation

In 1994 Nick Szabo defined smart contract as a computerized transaction protocol that executes the terms of a contract whose objectives are to satisfy common contractual conditions minimize exceptions both malicious and accidental and minimize the need for trusted intermediaries.

Recently, after the advent of blockchain technologies, this idea has become very popular. The specific characteristics of this technology allow, in fact, to create an environment suitable for the automation of legal relationships on a large scale: the peer to peer architecture, the append only feature, the high tamper resistance grade as well as transparency and appropriate consensus algorithms are all decisive to make people develop their juridical relations fast and safely.

But in order to create a smart contract, a legal agreement needs to be codified in the appropriate programming language (e.g., Solidity for Ethereum), thus a technical translation is introduced, which is different from the one already made by the parties legal counselors to make their claims meet the legal constraints.

Are these two translations commensurable? And if they are not, how are we supposed to deal with them in terms of risks and accountability?

In my talk, I am going to analyse two distinct scenarios:

a) the first, which is probably the main one in the short/medium term, is the situation in which the parties form their legal agreement as usual and the n in a second time, they codify that part of the agreement they want to automatize. So, here we have a double time process: stipulation off chain and translation on chain of part of it
b) the second, which could be perhaps the long term achievement of the computer revolution (J. Moor) in contractual matters, is the situation in which the parties agreement is created directly on chain without a previous legal formation of their complete will with traditional tools a scenario, by the way, that can be read between the lines of the recent Italian legal recognition of smart contracts in art. 8 ter, D. L. December, 14th 2018, num. 135 as converted by Law February, 11th, 2019, num. 12.

Since those two scenarios seems to imply different dogmatic, methodological, educational and philosophical issues, I will discuss

both, trying to draw a general framework to address the challenges posed by this new level of the spread of automation in law.

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Fake News and the Convention on Cybercrime

The current COVID-19 pandemic and the recent term of the United States President, Donald Trump have brought to the attention of the broader community the term "fake-news". Some jurisdictions have developed anti-fake news legislation whilst others have used existing cybercrime legislation. A significant deficiency is the lack of a clear definition of fake news. Just because a person calls something "fake news" does not mean that it is indeed false. Particularly during pandemics the aim should be to have misinformation and disinformation removed quickly from the web rather than prosecute offenders. The most widely accepted international anti-cybercrime treaty is the Convention on Cybercrime developed by the European Union. Unfortunately, the Convention is silent about fake news the propagation of which is, in reality, a cybercrime.

Using examples from Southeast Asia the paper develops a comprehensive definition of what constitutes fake news, and ensures that it covers the various varieties of fake-news.

The analysis has resulted in a definition of fake news as the deliberate publication or distribution of material that contains disinformation or misinformation that is misleading by design and:

a. the material is used to defame an individual; and/or
b. genuine sources are imitated; and/or
c. content is false and meant to deceive or harm; and/or
d. headlines, visuals or captions do not support the content; and/or
e. genuine content is shared with false contextual information; and/or
f. genuine information or imagery is manipulated to deceive.

It was also clear from the earlier analysis that hate speech often was based on misinformation or disinformation. As such, hate speech can be considered to be a subset of fake-news. Hate speech is defined as the publication or distribution of fake news with the intention of inciting hatred or violence against ethnic, religious, political and other groups in society.

The paper proposes a number of offences including those that should be apply to platform service providers. The recommendations could be easily adapted for inclusion in the Convention of Cybercrime or other regional conventions. Such an approach is desirable as

cybercrime including the propagation of fake news is not a respecter of national borders.

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When Law Becomes Politics

The struggle over the judicial system was always also a political struggle. However, it is the contention of this paper that under neoconservative populist administrations, like Trump in the USA and Netanyahu in Israel, the law, and the rule of law, became a contentious concept. The paper analyzes how law turns into politics taking the Israeli system as a case in point. The status of the law, the legal system, and the branches of the judicial system, in particular the supreme court, are the first level of analysis. Namely, rule of law as part of a concept of democracy and the way it has been challenged. Second, I take the judicial conflict between formalist and activist judges, taken from the US legal context and imported into Israel, as the cornerstone of changing the ideological landscape, translating this into a conflict between liberal and conservative politics. Law thus becomes a contentious arena of political struggle.

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The Problem of Syria Refugees in Brazil in Face of the Protection of Human Rights

Political crises in Syria have disastrous effects, violent repression and poor infrastructure due to the civil war. With all this insecurity, the only viable solution would be to escape to countries where they will feel welcomed and safer. In this sense, the receptivity of Syrians in Brazil has been a real humanitarian lesson, due to the facilitation of visas to enter the country, insertion in programs for the inclusion of refugees and social assistance. The purpose of this article is to analyze public policies for the protection of refugees and the rights guaranteed by the host country and international law. For this purpose, the research uses the deductive method, seeking foundations in books and national and international legislation.

Norbert Varga
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The Adaptation of the First Hungarian Legislation on Cartels

The First World War had an impact on the codification of private law in Europe. This impact emerged in the regulation of state intervention. Its aim was the defence of public interests. This was the reason why the cartel-supervisory authorities had to be regulated in Hungary too. This is the reason why Act XX of 1931 was enacted which was the first Hungarian trust or antitrust regulation. The practical validation of the Cartel Law (XX act of 1931) in Hungary can be reconstructed based on judicial practice. The existing memorials, essentially, only contain the verdicts of the courts of the first and second instances, and there are only a small number of archive sources which describe the factum in its entirety. Due to this, only the information found in the verdicts' dispositional and justification portions can aid us in the examination of the rules of procedural law. All in all, it can be stated, by taking archival sources into account that the peremptory majority of cartel cases were jurisdictional legal actions. Apart from the problems in the field of substantive law, we can observe the process of the lawsuits and the procedural acts, especially the act of verification. We can observe what data and information did the courthouses used in order to reach their resolutions. We would like to present the regulation of the Hungarian cartel law special attention to the most important issues of the codification and the practice of Hungarian cartel law. By examining archival and literary sources, it can be stated that an orderly court procedure basically can be reconstructed based on the remained warrants. The materials of the Cartel Court and the Cartel Committee found in the National Archives of Hungary can provide further assistance in the interpretation of legal precedents, to the introduction of the practical predominance of cartel law in the first part of the 20th century. The Hungarian regulation regulated cartel public law in the defence of public good and public interest. The state wanted to control cartels. The tools of control were the cartel-supervisory organizations. The Hungarian cartel-supervisory organizations were as follows: the competent ministry, the Royal Legal Directory, the Cartel Committee, the Price-Analysing Committee, the ordinary courts, the Cartel Court and the courts of arbitration. These authorities took part in the supervision of cartels. The cartel organisations which were allowed in the first half of the 20th century had a significant size in Hungary, in Europe too. The activity of courts

was extraordinary in order to keep them in a legally allowed frame. They put pressure on the operation of those firms which were significant in our economic life. As a result, the courts formed our economic life as well. The courts had the most significant duties regarding the supervision of cartels, influencing the everyday operation of the firms.

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The Successory Rights of the Cryopreserved Embryo

This research aims to analyze the legal implications related to assisted human reproduction, especially the rights inherent to cryopreserved embryos. To this end, we sought to verify in the legal provisions, as well as in Brazilian doctrine and jurisprudence, the status of cryopreserved embryos from such techniques, as well as the rights inherent to them, especially regarding the succession issue. In this sense, we sought to clarify questions about the most relevant and controversial issues regarding the possibility of rights for these embryos, as well as the possible implications for the legal scenario. Thus, it was found that, although there is no specific legislation that determines the rights of embryos, they, should they be implanted in the spouse's postmortem maternal womb, should have their inheritance rights ensured. This is because, in addition to respecting the parental project, we would also seek to comply with the constitutional principles that prohibit any discrimination between children and guarantee protection to the family, the main cell of society.

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Derivative Actions, Corporate Governance and Economics: Understanding the Implications of Shareholder-Led Litigation Mechanisms