

Athens Institute for Education and Research
2014

Selected Legal Issues
in
Economics

Edited by

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First Published in Athens, Greece, by the
Athens Institute for Education and Research
ISBN: 978-618-5065-24-9

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Printed and bound in Athens, Greece by ATINER
8 Valaoritou Street
Kolonaki, 10671 Athens, Greece
www.atiner.gr

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Introduction

David A. Frenkel

This book offers a selection of essays that seek to shed light of several legal issues in economics.

The book is divided into five sections: 1) Banking, 2) Taxation, 3) Patents, 4) Nature Resources, and 5) Trade and Tourism.

The essays are based on presentations at the International Conferences on Law, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece.

The essays were peer-reviewed and selected on the basis of the reviewers' comments and their contribution to the ongoing discussion of the respective issues.

I hope that the readers will find this collection of essays stimulating and that the essays succeeded in accentuating some of the issues that the world is facing regarding economics.

Banking

The financial crisis has affected the entire world and invited us to re-examine certain issues. This volume commences with Michael P. Malloy's essay *Core Principles for Effective Banking Supervision: New Concepts and Challenges*.

Malloy examines some fundamental issues raised by the newly revised Core Principles. The author raises three cardinal questions: What expectations are imposed upon jurisdiction that adopts the Core Principles? Are the Core Principles an effective response to the international financial crisis? And what is the legal status of the Core Principles? Malloy argues that the Core Principles may operate as a set of functionally binding norms and possibly as new source of law in international practice.

Taxation

Elfriede Sangkuhl, in her essay *The Global Taxation of Corporation*, which is the first in this section, suggests that there needs to be a global approach to the taxation of corporate profits. Sangkuhl argues that multinational enterprises are taking advantage of their corporate personhood and the free global movement of capital to take advantage of the transfer pricing rules and so, avoid tax. The authoress calls for an alignment of corporate profits and taxation on the jurisdictions in which corporations actually earn the profits. She calls also for recognition of the fact that multinational enterprises are using the current transfer pricing rule to legally

avoid their tax obligations on the taking jurisdictions where their business is conducted. She argues that apportioning corporate profits grounded in a physical reality, even if not perfect, attempts to acknowledge the impact corporations have on real people where they physically live and work.

The second essay in this section is by Pieter Brits. In his essay *The Taxation of Interest Earned in Customer Loyalty Award Programming in South Africa*, Brits argues that customer loyalty awards received under a customer loyalty award programme have a monetary value, and therefore should be included in the gross income of taxpayers. If these awards are accumulated over a period of time and retained by the award giver, then interest should be earned on the value thereof and paid to the member of the programme. According to the South African Court decision from 2007 (the Brummeria Renaissance case) the right to receive interest-free loans has been recognised as a taxable right which should be valued and included in the gross income of a taxpayer. Hence, the right to receive interest on accumulated customer loyalty awards would be regarded as taxable with the resultant inclusion thereof in the gross income of the taxpayer. The taxation of awards received under loyalty award programmes is inconsistently applied across jurisdictions but no provision is made for the taxation of interest earned on accumulated awards. The author calls upon revenue authorities to amend tax legislation in order to provide clear guidelines of the taxation of customer loyalty awards and the interest earned on accumulated awards.

Patents

Valeryia Stukina, in her essay *Patents' Choice Problem in Pharmacy: Legal and Economic Aspects*, points out the significant role patents play in the high cost pharmacy business. Whenever a pharmaceutical company comes out with a new invention it must secure the exclusive rights to its invention and choose the appropriate protection among international, European or several national patent systems. The main treatises that encourage and protect the innovations and promote the economic development in the pharmaceutical sphere are divided to three levels: International, European, and national. Stukina argues that the economic aspect to a large extent depends on balance among the costs and expected profit. At the same time, the increased competition determines the demand for specialised kinds of patents which can block access to this market for other companies, and increase the commercial value of the invention. The authoress's view is that the company's patent choice depends on many factors of internal and external character but the most essential are legal and economic aspect of its choice.

Natural Resources

Dalita Ramwell's essay *Changing Property Rights in Fresh Water in South Africa*, brings out the question of using natural resources. Country's economy is based for a great part on natural resources. However, not all natural resource are a State's property. Historically they belonged to the owner of the land in which they were found based on the legal principle that the owner of a piece of land is the owner of all that is above and below that land including the natural resources. Water is a nature resource and was no exception to the rule. The South African National Water Act of 1998, which aims to vest the rights of all fresh water on the state, has created a constitutional tension as it ends the private property rights of this natural resource.

Ramwell highlights and discusses these areas of tension, and argues that rather than transferring the ownership of natural resources to the state, a better and more legally cohesive result could have been achieved by revising the philosophy and parameters of the concept of ownership, particularly ownership of natural resources, to link their ownership to responsibilities. This discussion has international relevance as natural resources transcend national borders and protection, exploitation and regulation of natural resources is a growing economy international problem.

Trade and Tourism

The final essay in this book deals with Trade and Tourism. Frank J. Vandall and Emily Quan, in their essay *An Economy Analysis of Lifting the Cuban Embargo*, argue that from an economic perspective, the USA should recognise Cuba and open the doors to tourists and trade. Some critical considerations form the foundation of the argument for a full recognition of Cuba, should be taken in consideration. One consideration is the economic one. Recognition of Cuba will open the door for trade as well as tourism. Another consideration is how to treat a communist regime. Since President Nixon opened China to trade with the USA, communism has become a nonissue. The fact that Cuba is a communist government should not be a threat. Cuba is open to tourists from many countries in the world like Germany, Spain, Canada and Australia. Tourism is important for the economy of the country. Another consideration is being neighbour countries. Both countries should work together for mutual social and economic benefit. Trade is another important factor for the economy. The authors' goal is to make clear that from an economic perspective, the legal recognition of Cuba will open the doors to tourism and trade.