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*Selected Issues in*  
**Public Private Law**

*Edited by*

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## Table of Contents

<b>List of Contributors</b>	<b>3</b>
<b>Introduction</b> <i>David A. Frenkel</i>	<b>7</b>
<b>Banking and Commerce</b>	
<b>There are no Bitcoins, Only Bit Payers: Law, Policy and Socio-Economics of Virtual Currencies.</b> <i>Michael P. Malloy</i>	<b>13</b>
<b>How the Macroeconomic Theories of Keynes influenced the Development of Government Economic Finance Policy after the Great Depression of the 1930's: Using Australia as the Example</b> <i>Elfriede Sangkuhl</i>	<b>25</b>
<b>Contracts</b>	
<b>Consumer Right of Withdrawal: Towards an Implementation of Consumer Protection Citizenship</b> <i>Maria Luisa Chiarella</i>	<b>47</b>
<b>The Underlying Law and Withdrawal of Offers to the World-at-Large in PNG: A Note on Recent Considerations and General Contract Law Concerns</b> <i>Thomas P. Corbin and Godfrey Langtry</i>	<b>57</b>
<b>Contractual Freedom and the Corporate Constitution; A Study on where Greek Law Stands in a Comparative Context and the Way Forward</b> <i>Georgios Zouridakis</i>	<b>69</b>
<b>Immigration and Citizenship</b>	
<b>Prospect of Policy of Foreigners of Chinese Origin and Chinese Citizens who Reside in Foreign Country: From the Perspective of Mass Influx</b> <i>Guofu Liu</i>	<b>83</b>
<b>Human Rights</b>	
<b>"Impoverished Families" have been guaranteed the Human Right to Adequate Food in the Brazilian Legal Amazon Region</b> <i>Claudia Ribeiro Pereira Nunes</i>	<b>97</b>
<b>Employment Relations</b>	
<b>South African Law Regarding Employees Resignation due to Employers Conduct</b> <i>Motseotsile Clement Marumoagae</i>	<b>111</b>
<b>Sovereignty</b>	
<b>Sovereignty Conflicts as a Distributive Justice Issue</b> <i>Jorge Emilio Núñez</i>	<b>125</b>
<b>Constitution</b>	
<b>Romanian Constitutional Jurisdiction: Suspension and Impeachment of the President</b> <i>Cristina Cojocaru</i>	<b>139</b>

<b>Rule of Law and Constitutional Values</b>	
<b>Pragmatism and Judicial Restraint</b> <i>Matthew Lewans</i>	<b>155</b>
<b>The Legal Profession</b>	
<b>From a Professional Tribe to a Business Neo-Tribe: Towards a Theory of Consumer-based Lifestyles in the Legal Profession</b> <i>Anna Chronopoulou</i>	<b>169</b>
<b>Law of the Person</b>	
<b>Is the UK Heading towards Protection of Image Rights?</b> <i>Corinna Coors</i>	<b>187</b>
<b>A Modern Variant of Justice: The Right over One's Own Body in Time of Disease</b> <i>Paola Chiarella</i>	<b>199</b>

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## **Introduction**

*David A. Frenkel*

The traditional division between private law and public law is not anymore as pure and simple as it was. Areas which were accepted and taught as private law are affected by and include principles used to be named public law, and public law has become in part compilation of issues which were classified as private law. Thus, for instance, private law and public law are interwoven in commercial law and labour law. The classical division between public and private law has been blurred and time has come when we should look at law in different ways, broader and more comprehensive.

This book offers a collection of essays on issues which can be classified and categorised under both private and public laws. The authors seek to illuminate the issues discussed in the various essays from both perspectives. They make use of insights arising from jurisprudence, schools of thoughts, history, economy, and sociology to develop new and creative solutions and interpretations of pending problems.

The essays are revised versions based on presentations at the International Conferences on Law, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. They were peer-reviewed and selected on the basis of the reviewers' comments and their contribution to the ongoing discussion of the respective issues.

The book is divided into ten sections, and the essays are arranged according to the issues discussed.

The following sections will briefly present the various contributions.

### **Banking and Commerce**

The book commences with Michael P. Malloy's essay *There are no Bitcoins, Only Bit Payers: Law, Policy and Socio-Economics of Virtual Currencies*. Malloy explores the legal character of the Bitcoin and other emerging "virtual currencies," and the legal and policy implications of Bitcoin trading. He argues that investment and commercial notes are the appropriate legal analogue for classifying Bitcoins, since this characterisation would lead to the application of an appropriate and effective body of transactional and regulatory law to Bitcoins.

The second contribution is Elfriede Sangkuhl's essay *How the macroeconomic theories of Keynes influenced the development of Government Economic Finance Policy after the Great Depression of the 1930's: Using Australia as the example*. Sangkuhl shows how the macroeconomic theories of Keynes influenced the development of Government Economic Finance Policy after the Great Depression of the 1930's, using Australia as an example.

## **Contracts**

The next essay is *Consumer Right of Withdrawal: Towards an Implementation of Consumer Protection* Written by Maria Luisa Chiarella. Consumer protection is important to the goals of common market regulation. Among the various instruments of European law, there is the right of withdrawal (“*ius poenitendi*”). The right of withdrawal operates during a “cooling off period”. Chiarella raises the question whether the “cooling off period” protection is suitable and appropriate to offer the consumer a complete and satisfactory safeguard.

Thomas P. Corbin and Godfrey Langtry, in their essay *The Underlying Law and Withdrawal of Offers to the World-at-Large in PNG: A Note on Recent Considerations and General Contract Law Concerns*, state that that technology is always well ahead of the law and a review of relevant law is always playing catch-up to the technology being used in the market. Though limiting themselves to the example of Papua New Guinea, they analyse the view that input from e-technology experts as well as legal and governmental experts will be helpful to formulate progressive suggestions for changes to current law on contract and commerce.

The fifth essay is *Contractual Freedom and the Corporate Constitution; a Study on Where Greek Law Stands in a Comparative Context and the Way Forward* written by Georgios Zouridakis. Zouridakis points out that following the recent internationalised financial crisis, there is a recurrent academic and legislative interest in the field of shareholder rights protection. However, what seems to be overlooked though in the relevant literature is the role the corporate constitution assumes as a source of rights. The essay is part of an ongoing comparative study on the protection of shareholders under corporate law. Its subject is the discretion provided by the German, Greek and UK legal frameworks to formulate rights connected with corporate membership by drafting and amending the articles of association. The author identifies and welcomes a notable yet hesitant reform of Greek Corporate Law resulting in a departure from its version of the principle of “stringent law” (*Satzungstreng*); a principle that still permeates the German Law on public limited companies. His conclusions are followed by the suggestion that a more decisive move towards flexibility would be beneficial and calls for the British experience which offers useful insights towards that direction.

## **Immigration and Citizenship**

In the sixth essay, *Prospect of Policy of Foreigners of Chinese Origin and Chinese Citizens Who Reside in Foreign Country: From the Perspective of Mass Influx*, Guofu Liu analyses the issue of influx of foreigners to their original country and the policies and solutions available in order to protect them in the international society, using China as example.

## **Human Rights**

Claudia Ribeiro Pereira Nunes is the author of the seventh essay. In her essay *Impoverished Families” have been guaranteed the Human Right to Adequate Food in the Brazilian Legal Amazon Region*, she investigates whether there is adequate food and nutrition security for single-parent families headed by women from 18 to 25 years of age, with at least 3 to 4 children who receive a State income family program distribution.

## **Employment Relations**

Motseotsile Clement Marumoagae, the author of the eighth essay *South African Law Regarding Employees Resignation due to Employers Conduct*, indicates that even though the Constitutional Court in South Africa has attempted to clarify the law in relation to the requirements for constructive dismissal, there is still confusion relating to the amount of “culpability” required from the employer to justify the employee resigning due to the alleged intolerable work conditions within the workplace.

## **Sovereignty**

Jorge Emilio Núñez, in his essay *Sovereignty Conflicts as a Distributive Justice Issue*, proposes a way of dealing with certain sovereignty conflicts, as most conflicts in international relations have, at least to a certain extent, something to do with sovereignty. In his essay he considers how distributive justice theories can be in tune with the concept of sovereignty and explores the possibility of a solution for sovereignty conflicts.

## **Constitution**

Cristina Cojocaru is the author of the next essay *Romanian Constitutional Jurisdiction: Suspension and Impeachment of the President* analyses the conflict between the Romanian Parliament and the president which broke out in 2012. She shows how such disputes should be solved by the Constitutional Court within its legal procedures of reviewing the constitutionality of laws.

## **Rule of Law and Constitutional Values**

The tradition and influence of pragmatism and judicial restraint in American legal culture is examined by Matthew Lewans in his essay *Pragmatism and Judicial Restraint*. By examining the jurisprudence of James

Bradley Thayer and Oliver Wendell Holmes, he shows that this discourse has enriched debates about the constitutional relationship between the judiciary and the modern administrative state.

### **The Legal Profession**

Anna Chronopoulou states that despite the commodification of the legal profession, the importance of consumption in articulating legal professional identity has gone carefully neglected. In her essay *From a Professional Tribe to a Business Neo-Tribe: Towards a Theory of Consumer-based Lifestyles in the Legal Profession*. She proposes that an alternative focus is required in order to shed new light in the formation of legal professional identity. Her view is that neo-tribal sociality addresses the importance of consumption in the formation of consumer groups. From this perspective, she argues, it provides an alternative focus for conceptualising legal professional identity, which also challenges the social organisation of the legal profession by providing alternative interpretations on issues of gender, class and age.

### **Law of the Person**

The last two essays in this book deal with law of the person. The first, *Is the UK heading towards protection of image rights?* Written by Corinna Coors, analyses the background to and latest developments in case-law dealing with the commercial exploitation of an individual's personality in the UK. Her conclusion is that although traditional common law remedies will evolve, a formal recognition of personality rights remains unlikely in the near future in the UK.

The second essay is *A modern variant of justice: the right over one's own body in time of disease*. The view of the author, Paola Chiarella, is that the growth in biomedical knowledge and technology has expanded not only the possibilities to *survive* but also the impossibility *to die* when it is desired. Self-determination over one's own body is denied when the goal or the result of it is death. She calls for break this last limit and accomplish a dramatic last desire "let me go".

I hope that the readers will find this collection of essays stimulating and insightful reading and use these essays to acquaint themselves with current issues the world is facing. Many of the debates analysed are ongoing and the policy and interpretations suggestions brought up in the essays will undoubtedly contribute to the future course of the debates.