



THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH

# Abstract Book

15<sup>th</sup> Annual International Conference on  
Law

16-19 July 2018, Athens, Greece

Edited by  
Gregory T. Papanikos

2018



Abstracts  
15<sup>th</sup> Annual International  
Conference on  
Law  
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Athens, Greece

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## Preface

This book includes the abstracts of all the papers presented at the 15<sup>th</sup> *Annual International Conference on Law (16-19 July 2018)*, organized by the Athens Institute for Education and Research (ATINER).

In total 31 papers were submitted by 32 presenters, coming from 17 different countries (Albania, Australia, Brazil, Croatia, Greece, Hong Kong, Hungary, Israel, Italy, Lithuania, Luxembourg, Romania, Russia, South Africa, South Korea, UK, and USA). The conference was organized into 10 sessions that included a variety of topic areas such as Law History, Human Rights, Criminal Justice, Commerce, Business and Company Law, Personal Law and Rights of the Child, Civil and Administrative Law, Judiciary's Accountability and International Relations, Law Teaching, and more. 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 seven research divisions and 37 research units. Each research 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**

**15<sup>th</sup> Annual International Conference on Law**  
**16-19 July 2018, Athens, Greece**  
**Organizing and Academic Committee**

ATINER's conferences are small events which serve the mission of the association under the guidance of its Academic Committee which sets the policies. In addition, each conference has its own academic committee. Members of the committee include all those who have evaluated the abstract-paper submissions and have chaired the sessions of the conference. The members of the **academic committee** of the 15<sup>th</sup> Annual International Conference on Law were the following:

1. Gregory T. Papanikos, President, ATINER.
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. Ronald Griffin, Professor, Florida A&M University, USA.
5. Vladimir Orlov, Professor, Herzen State Pedagogical University of Russia, Russia.
6. Michael Blissenden, Professor, Western Sydney University, Australia. Work Integrated Learning: Teaching Law within a 21st Century Curriculum.
7. Assaf Meydani, Academic Member, ATINER & Dean of the School of Government and Society, The Academic College of Tel-Aviv-Yaffo, Israel.
8. Norbert Varga, Associate Professor, University of Szeged, Hungary.
9. Jayoung Che, Academic Member, ATINER & Deputy Director, Korean Academy of Greek Studies, South Korea.
10. Denes Legeza, Deputy Head of Department, Hungarian Intellectual Property Office, Hungary.
11. Lavinia-Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania.
12. Georgios Zouridakis, Research Fellow, Athens Institute for Education and Research, Greece.

The **organizing committee** of the conference included the following:

1. Fani Balaska, Researcher, ATINER.
2. Olga Gkounta, Researcher, ATINER.
3. Eirini Lentzou, Administrative Assistant, ATINER.
4. Konstantinos Manolidis, Administrator, ATINER.
5. Kostas Spyropoulos, Administrator, ATINER.



**FINAL CONFERENCE PROGRAM**  
**15<sup>th</sup> Annual International Conference on Law, 16-19 July 2018**  
**Athens, Greece**

**PROGRAM**

Conference Venue: Titania Hotel, 52 Panepistimiou Street, 10678 Athens, Greece

**Monday 16 July 2018**

**08:00-09:00 Registration and Refreshments**

**09:00-09:30 [Welcome and Opening Address](#) (Room A - 10<sup>th</sup> Floor)**

**Gregory T. Papanikos, President, ATINER.**

**09:30-11:00 Session I (Room A - 10<sup>th</sup> Floor): Law History I**

**Chair:** 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.

1. Norbert Varga, Associate Professor, University of Szeged, Hungary. Regulation and Practice of Hungarian Cartel Law in 20<sup>th</sup> Century.
2. Vasileios Adamidis, Lecturer, Nottingham Trent University, UK. Combating Populism through the Rhetoric of Law.
3. Ivan Kosnica, Assistant Professor, University of Zagreb, Croatia. Social Rights in the First Yugoslavia (1918-1941): Tradition, Model and Deviations.
4. Kristof Szivos, Graduate Student, University of Szeged, Hungary. Historical Basics of 'Eventualmaxime' in the Hungarian Civil Litigation.

**11:00-12:30 Session II (Room A - 10<sup>th</sup> Floor): Human Rights and Criminal Justice**

**Chair:** Ronald Griffin, Professor, Florida A&M University, USA.

1. Linda Greene, Evjue-Bascom Professor of Law, University of Wisconsin Law School, USA. Racialized Police Violence in America: Beyond Symbolic Gestures to Transitional Justice.
2. Mashele Rapatsa, Lecturer, University of Limpopo, South Africa. The Complementarity of the Capabilities Approach and Therapeutic Jurisprudence: An Analysis of the Role of South Africa's Constitutional Court in the Interpretation and Enforcement of Human Rights.
3. Roni Rosenberg, Senior Lecturer, Ono Academic College, Israel. Revenge Porn in Criminal Law.
4. Jayoung Che, Deputy Director, Korean Academy of Greek Studies, South Korea. Korea's Detrimental Revision of Medical Service Law in the year 2000.

**12:30-14:00 Session III (Room A - 10<sup>th</sup> Floor): Family, Personal Law and Rights of the Child**

**Chair:** Georgios Zouridakis, Research Fellow, Athens Institute for Education and Research, Greece.

1. Jose Geraldo Romanello Bueno, Chairman, Civil Law Department, Mackenzie Presbyterian University, Brazil. Anonymous Childbirth.
2. Peng Han, Senior Lecturer, Lingnan University, Hong Kong. How we can Protect Children Effectively in the Future? – A Discussion on the Children Abuse in Chinese Nursery and the Modification of Laws.
3. Michely Vargas Delpupo, Assistant Professor, Sao Paulo Adventist University, Brazil. Legal Possibility of Adoption by Homoafetive Individuals.
4. Pedro Vinicius de Faveri, Legal Assistant, Civil Law Department, Mackenzie Presbyterian University, Brazil & Jose Geraldo Romanello Bueno, Chairman, Civil Law Department, Mackenzie Presbyterian University, Brazil. Paternity Denial in the Light of the Principle of Affectiveness.

**14:00-15:00 Lunch**

**15:00-16:30 Session IV (Room A - 10<sup>th</sup> Floor): Commerce, Business and Company Law**

**Chair:** Vladimir Orlov, Professor, Herzen State Pedagogical University of Russia, Russia.

1. Cornelius Van der Merwe, Research Fellow / Emeritus Professor, University of Stellenbosch / University of Aberdeen, South Africa. Regulation of Short-term Rental in Condominiums (Strata Title Schemes)?
2. Lavinia-Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania. The Opening of the Insolvency Procedure. Theory vs. Practice.
3. Georgios Zouridakis, Research Fellow, Athens Institute for Education and Research, Greece. Shareholders' Derivative Suits against Corporate Directors, Following Cross-Border Mergers: A Functioning Remedy within the EU?
4. Igor Materljan, PhD Student, University of Rijeka, Croatia & Legal Officer at the European Commission, DG ESTAT, Luxembourg. Arbitration Clauses Contained in Bilateral Investment Treaties Concluded between Member States of the European Union.

**16:30-18:00 Session V (Room A - 10<sup>th</sup> Floor): Civil Law, Administrative Law, Judiciary's Accountability and International Relations**

**Chair:** Lavinia-Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania.

1. Vladimir Orlov, Professor, Herzen State Pedagogical University of Russia, Russia. Legal Sources and Interpretation in Russian Civil Law.
2. Phindile Raymond Msaule, Lecturer, University of Limpopo, South Africa. Who Guards the Guardians? Revisiting the Judiciary's Accountability and the Rule of Law.
3. Aida Hoxha, PhD Candidate, University of Tirana, Albania. Administrative Courts' Subject-Matter Competences of the Countries of European Union and of the Countries Aspiring Membership in the European Union, a Comparative View of Legislation and Judicial Practice.

**18:00-20:00 Session VI (Room B - 10<sup>th</sup> Floor): ATINER's 2018 Series of Academic Dialogues A Symposium Discussion on *The Future of Teaching and Researching in a Global World***

**Chair:** Gregory T. Papanikos, President, ATINER.

1. Michael P. Malloy, Director, Business and Law Research Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA. Experiential Learning in the Classroom.
2. Dawn Roberts-Semple, Assistant Professor, York College, CUNY. USA. Next Generation Air Quality Measurement Technologies.
3. Majed Abu-Zreig, Professor, International Platform for Dryland Research and Education (IPDRE), Japan. Jordan University of Science and Technology: Road to the Globe.
4. Juan Martinez Solis, Assistant Professor, Chapingo Autonomous University, Mexico. The Near Future of Agriculture Graduate Programs in Mexico.
5. Nadhir Al-Ansari, Professor, Lulea University of Technology, Sweden. Higher Education in Iraq.
6. Ronald Griffin, Professor, Florida A&M University, USA. Higher Education: Liberalism, Literature, and Law.

**21:00-23:00 Greek Night and Dinner**

**Tuesday 17 July 2018**

**07:45-11:00 Session VII: An Educational Urban Walk in Modern and Ancient Athens**

**Chair:** Gregory A. Katsas, Vice President of Academic Affairs, ATINER & Associate Professor, The American College of Greece-Deree College, Greece.

Group Discussion on Ancient and Modern Athens.  
Visit to the Most Important Historical and Cultural Monuments of the City (be prepared to walk and talk as in the ancient peripatetic school of Aristotle)

**11:15-13:00 Session VIII (Room A - 10<sup>th</sup> Floor): Human Rights, Intellectual Property, and Environment**

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

1. Ronald Griffin, Professor, Florida A&M University, USA. The Rock: The Role Water Plays in Our Lives.
2. Claudio Sarra, Associate Professor, Università di Padova, Italy. The Italian Declaration of Rights in the Internet and the European General Data Protection Regulation on Decisions based on Automated Processing: First Steps against the Data Mining Abuse?
3. Danijela Vrbljanac, Postdoctoral Fellow, University of Rijeka, Croatia. Personal Data Transfer to Third Countries - Disrupting the Even Flow?
4. Bukola Faturoti, PhD Student, University of Leeds, UK. From Compact Disc to Live Streaming: The Nigerian Copyright Law and the Piracy Battle.
5. Rimante Rudauskiene, PhD Student, Vilnius University, Lithuania. Green Public Procurement in Lithuania: Legal Aspects of Regulation and Practice.

**13:00-14:00 Lunch**

**14:00-15:30 Session IX (Room A - 10<sup>th</sup> Floor): Law History II**

**Chair:** Norbert Varga, Associate Professor, University of Szeged, Hungary.

1. Denes Legeza, Deputy Head of Department, Hungarian Intellectual Property Office, Hungary. Mechanical (Reproduction) Right of Musical Works in the '*Belle Époque*'.
2. Jelena Kasap, Senior Teaching and Research Assistant, Josip Juraj Strossmayer University of Osijek, Croatia & Visnja Lachner, Assistant Professor, Josip Juraj Strossmayer University of Osijek, Croatia. Legal and Historical Overview of the Development of the Process of Forced Execution of Claims in Croatian Law.
3. Mate Petervari, Assistant Lecturer, University of Szeged, Hungary. The Establishment of the Districts in Hungary after the Austro-Hungarian Compromise.
4. Bence Krusoczki, Graduate Student, University of Szeged, Hungary. The Practical Implementation of the Unfair Competition in the Arbitration Institute of the Budapest Chamber of Commerce.

**15:30-17:00 Session X (Room A - 10<sup>th</sup> Floor): Law Teaching**

**Chair:** Denes Legeza, Deputy Head of Department, Hungarian Intellectual Property Office, Hungary.

1. Michael P. Malloy, Distinguished Professor and Scholar, University of the Pacific, USA. Interdisciplinarity: Classic Crossover Cases and Effective Law Pedagogy.
2. Michael Blissenden, Professor, Western Sydney University, Australia. Work Integrated Learning: Teaching Law within a 21<sup>st</sup> Century Curriculum.
3. Michael Adams, Professor, Western Sydney University, Australia. The Future of Law Teaching and Technology.

**20:00- 21:30 Dinner**

**Wednesday 18 July 2018**  
**Mycenae and Island of Poros Visit**  
**Educational Island Tour**

**Thursday 19 July 2018**  
**Delphi Visit**

**Friday 20 July 2018**  
**Ancient Corinth and Cape Sounion**

**Vasileios Adamidis**

Lecturer, Nottingham Trent University, UK

## **Combating Populism through the Rhetoric of Law**

The classical Athenian democracy of the 5<sup>th</sup> and 4<sup>th</sup> centuries BCE, as a popular form of government, was exceptionally susceptible to demagoguery. Taking into account the difficulty acknowledged by thinkers (Canovan M., Laclau E., Moffitt B., Reno R.R., Mueller J.) of defining modern populism, the Athenian version differed significantly and needs to be re-examined. The proposed paper argues that the popular Athenian courts as an institution and, in particular, the rhetoric of law used by litigants and endorsed by the jurors (especially in the 4<sup>th</sup> century), cultivated a belief in constitutionalism, redefined the role of the demos within more appropriate limits, enforced a principled form of political interaction and antagonism and acted as a bulwark against extreme manifestations of (Athenian) populism.

Recurrent references in the surviving speeches of the Attic orators to the indisputable rule of law, recognising this principle as the uniting moral and political force of the Athenian polis, signified, at least rhetorically, the submission of all participants, including the 'people', to the governance of rules. The variety of tactics used by the speakers in expressing it, such as the personification of the laws, the frequent appeals to the will of the 'lawgiver' as an 'authority figure' for the Athenian people, despite the self-interested aims, created a sense of unity and 'togetherness' for the Athenian people, formed by the common submission to the governance of the laws. This was the first step towards the internalisation and implementation of common principles and values in public life, limiting the space for extreme manipulation of the will of the majority which could undermine constitutionalism and the structures of the state.

**Michael Adams**

Professor, Western Sydney University, Australia

## **The Future of Law Teaching and Technology**

The principles of legal education have continued to develop from Aristotle to Jeremy Bentham to modern times. The impact of contemporary technologies have changed the learning patterns and approves of our undergraduate and postgraduate law students and the way new practitioners engage with the profession. This paper conducts a review of the last 25 years of changes in teaching technology on law teaching and examines its impact on the inherent legal skills. The paper examines the impact of technology in teaching in the classroom and online; as well as its impact and opportunities in research (particularly comparative jurisdictional research). The final part of the paper examines the future of technology and its impact on law teaching, legal practice and clients use of technology.

**Michael Blissenden**

Professor, Western Sydney University, Australia

## **Work Integrated Learning: Teaching Law within a 21<sup>st</sup> Century Curriculum**

Law Students in the 21<sup>st</sup> Century live in a constantly changing world, with many demands on their time. Their legal education is critical to their future work possibilities, be it within the legal profession as a legal practitioner or working in legal related areas of government, industry and non-government organisations. Content knowledge is important but it is becoming clear that other skills are needed, including critical thinking, communication skills, reflection, and working in a team environment or in an individual capacity. Within that framework there is an opportunity to explore and implement such learning via a work integrated learning or placement (WIL/WIP).

This paper will report on the experience of an Australian work integrated placement in the area of Taxation Law with the Australian Revenue Authority (ATO). Students were placed in technical areas of the ATO, supervised by senior officers, work in a real workplace/real time environment and were challenged to apply their knowledge in a work place environment. In doing so, students were also required to utilise oral and written communication skills, reflect on their learning experiences, demonstrate teamwork in addition to demonstrating research skills and critical thinking.

**Jayoung Che**

Deputy Director, Korean Academy of Greek Studies, South Korea

## **Korea's Detrimental Revision of Medical Service Law in the year 2000**

Korea's current Medical Service Law, article 8 (Disqualification), was detrimentally revised in the year 2000, resulting in no effective restraint against immoral medical personnel. Before the revision of the law, medical men having been sentenced to imprisonment suffered disqualification of license, while, after the revision, medical doctors are not to be under disadvantage of disqualification, even though they committed professional negligence resulting in death, sex crime, what is more, murder and abandoning a dead body.

Even in case medical doctors suffer disqualification, the Medical Service Law, article 65, clause 2, defines that as soon as the cause of disqualification disappears or sincere repentance is obviously shown, medical license can be reissued within the period of one to three years. So, even disqualification is no more than a temporary disposal, and not perpetual. This situation is very contrasted with other professions which define at least the suspension of five years. According to the report data of the office of an Assemblyman, medical doctors' application to the reissue of license following disqualification have been approved a hundred percent without exception, which proves that inspection of qualification is going on superficially (According to the analysis of the state affair inspection data submitted by the Ministry of Health and Welfare, the applications which equal to the number of reissue of medical license for the recent ten years reach 94 cases).

To make things worse, even when the medical personnel who has been sentenced to imprisonment are employed in other hospital, the patients do not have any information of him, so that they are exposed to danger. Actually, a doctor who was imprisoned by professional negligence resulting in death has proved himself to be implicated in other 4 cases of patients' death.

The Korean common people hardly recognize the loophole of the Medical Service Law revised in the year 2000. Actually it is not a spare case that even the legal experts, judges, prosecutors, layers and professors of law, falsely appreciate that medical doctors who have got involved in criminal cases, professional negligence resulting in death, embezzlement, malpractice, robbery, rape, are destined to suffer suspension of business or disqualification of license, which signify that the revision of the Medical Service Law of the year 2000 lacks a common sense.



**Pedro Vinicius de Faveri**

Legal Assistant, Civil Law Department, Mackenzie Presbyterian University,  
Brazil

&

**Jose Geraldo Romanello Bueno**

Chairman, Civil Law Department, Mackenzie Presbyterian University,  
Brazil

## **Paternity Denial in the Light of the Principle of Affectiveness**

The main goal of this essay is to discuss the aspects of the paternity denial in relation to the principle of affectiveness. Initially, the essay deals with the transformations of family law and the current notion of the concept of this right, introducing the basic principles to understand the correct judgment in the procedural demands of paternity denial. It is necessary to study the present theme as judicial demands are increasing, whose pretension is the prevalence of the socio-affectiveness bond before the biological one. It is important, however, to address the criteria of the paternal-filiation bond highlighting the legal, biological and affective reality. Because it is fundamental for the constitution of socio-affective paternity, therefore, it is imperative to study the elements to prove the possession of state of a son (daughter). Thus, the study and delineation of affective circumstances are important so that the best interest principle for the child is not harmed. Thus, we must analyze each concrete case in the sense of establishing the best alternative to preserve the best interest for the child.

**Michely Vargas Delpupo**

Assistant Professor, Sao Paulo Adventist University, Brazil

### **Legal Possibility of Adoption by Homoafetive Individuals**

The Brazilian law does not support, clearly, the adoption by couples of the same sex, as well as it does not forbid the holding of the same. Thereby, the following research aims to verify the legal possibilities of adoption by homosexual couples through literature research and the principles of Dignity of Human Person, Equality or Isonomy, the Best Interest of the Child and Adolescent, as well as the legal value of affection, Human Rights, among other constitutional principles. Because it is a subject that generates much discussion, jurisprudence analysis of the content was also considered. The theme is a current issue and also controversial due to resistance in admitting the rights of adoption to homosexual couples, as our society is marked by a cultural and legal consciousness that is discriminatory. The Brazilian Statute of the Child and Adolescent brings no restriction on sex, marital status or sexual orientation of the adopter. What should be analyzed is the child's best interest principle, being this the criteria basis for the judge's decision, as the real situation of the child or adolescent is being ascertained and what is best for them. Studies in Law and Psychology show that the absence of parents of both sexes does not influence the development of sexual and psychological identity of the child. Thus, the most reasonable position is the one that understands the viability of adoption by homosexual couples meeting the principle of human dignity, because it is a fundamental right of personality and a measure of social justice.

**Bukola Faturoti**

PhD Student, University of Leeds, UK

## **From Compact Disc to Live Streaming: The Nigerian Copyright Law and the Piracy Battle**

Technological development has always questioned the potency of the copyright law. Anytime there is a new technology, copyright holders and lawmakers scampered around to devise methods stemming infringements. Most times, it is always the law playing catch-up in the “Catch me, if you can” game. This position is not different in Nigeria. With the growth of the Nigerian entertainment, there is now a move away from apathy which has always accompanied copyright protection. Creative works are no longer perceived as a social venture but commercial engagement which employed many and also a source of revenue for the country. The internet era has provided a broader platform for creators to distribute their work creating a new business model for distribution and consumption of intellectual products. At the same time, another platform has also been created for pirates who without authorisation. It is no longer news that videos and films of Nigeria origins have flooded user-generated websites and other social media. While Nigerian cyberspace is buzzing with private and public organisations providing streaming services, the legality of the act has not been sieved through copyright law.

This paper will analyse the battle against terrestrial piracy in Nigeria and considers the suitability of the Nigerian Copyright Act in facing the internet challenge. Specifically, it will examine the scope of the right of communication to the public. It will investigate the applicability of this right to on-demand, live streaming and hyperlinks.

**Linda Greene**

Evjue-Bascom Professor of Law, University of Wisconsin Law School,  
USA

## **Racialized Police Violence in America: Beyond Symbolic Gestures to Transitional Justice**

In this paper, I explore whether post-Ferguson Missouri responses to racialized police violence have embraced *Transitional Justice* principles in probing and addressing the conditions in which racialized police violence in America is rooted. Historically, police reform efforts have not acknowledged the relationship between actual police violence and “structural violence” – those societal structures that reproduce marginalization, increasing vulnerability to police violence. But the surge of recent events accompanied by cell phone footage to the world and nationwide protests have prompted a renewed interest in police reform in several cities with storied histories of police violence. I will focus on *police reform* efforts in several cities --Ferguson Missouri, Baltimore Maryland, Chicago Illinois--where those reforms followed well publicized killings of unarmed Black men and United States Justice Department interventions and settlements. I will describe those reforms and assess whether they embrace symbolic reforms or undertake “transitional justice” measures appropriate to the scope of wrongdoing and the fundamental restructuring of the relationship between police forces and their communities. Although the circumstances of those international contexts differ in some detail from the context of racialized police violence in America’s cities, both phenomena have in elements in common that render *Transitional Justice* measures applicable to redress for racialized police violence. Those commonalities include the fracture of a citizen-government relationship, violent actions and summary executions that disavow the fundamental dignity of the subject, the lack of citizen access to governmental services, and the absence of accountability for government abuse of power. In the context of racialized deadly force, the fracture is grounded in past racial subordination and in the maintenance of institutions that produce racial marginalization and subordination--mass incarceration, systematic unemployment, failing schools, and substandard housing. In this context, the worth of the Black subject is devalued, and thus responses to racialized violence are limited to anecdotal and symbolic gestures. Here, as in international contexts, *Transitional Justice* requires more than symbolic measures to re-establish human dignity as well as develop norms and institutions that will curtail racialized police violence.

**Ronald Griffin**

Professor, Florida A&M University, USA

## **The Rock: The Role Water Plays in Our Lives**

We live on a rock. It's divided into parts. There is the surface, the subsurface, and the core. Life sprouted on the surface because water, minerals, and climate gave it a toehold to flourish. Men (life's latest experiment) dammed the rivers and scoured the earth. The intrepid poked holes in the earth, kicking up debris everybody's picking up. Men and women clustered here-and-there to make a living. They drew circles around neighbors, and their neighbors' aspirations, and did their best to stay on their side of their neighbors' lines. Some got coached to be neighborly; that is, to acknowledge the will to live in themselves and the will to live in other creatures on the same path. In all this trekking to find life niches to live, water's united us. If it is life's elixir and belongs to everybody, each person should get his ration. If it's property, science, markets, and water laws should determine who gets what, when, and how. If it is a human right, public institutions should prop the thing up, and defend it against foes, so everybody gets something. If it's all of the above we (humanity writ large) must do "the whatever" to save it. This essay grapples with "the whatever" to save fresh water. It chronicles what's been done in the past; critiques good water management practices; looks at feuds and their settlements in the United States; and last, but not least, the ongoing strife over water between India and Bangladesh.

**Peng Han**

Senior Lecturer, Lingnan University, Hong Kong

**How Can We Protect Children Effectively in the Future? –  
A Discussion on the Children Abuse in Chinese Nursery and  
the Modification of Laws**

A Beijing nursery, a branch of the well-known RYB Education chain, is recently accused of giving injections and feeding drugs to toddlers. This event comes weeks after a Shanghai childcare centre (which is affiliated to China's largest online travel company Ctrip) was alleged to have abused several toddlers. Those children abuse events sparked outrage in China. It is reported that 19 similar cases have occurred in the PRC in 2017 and the scandals shed light on how the lack of relevant laws and regimes could lead to lapses in oversight at the country's day care centers. This essay discusses the children abuse events and examines the current legal infrastructure of the PRC on the protection of children. Suggestions are made on how to establish or modify relevant laws and regulations in order to give more effective protection to children in the future. Comparisons are also conducted among different countries or regions on relevant laws and institutions.

**Aida Hoxha**

PhD Candidate, University of Tirana, Albania

## **Administrative Courts' Subject-Matter Competences of the Countries of European Union and of the Countries Aspiring Membership in the European Union, a Comparative View of Legislation and Judicial Practice**

Subject-matter competence is the right and the duty, also defined as the authority of a specific institution to decide on specific matters. In administrative justice, the competence refers to the legal "ability" of administrative courts to exert jurisdiction over specific issues defined by the provisions of specific laws that regulate the administrative courts. The early beginnings and the evolution of administrative justices in some countries, important members of European Union such as Italy, Greece, and Germany have been determinative on defining clear subject-matter competences for the respective administrative courts. On the other hand, there are countries like Albania that has a relatively new legislation on administrative courts, mostly influenced from the above mentioned countries with a long tradition. The aim of this study is to compare the subject-matter competences provided in the respective organic laws of countries like Italy, Greece (in Greece the administrative jurisdiction has been provided since 1833), and Albania (in Albania the law "On Organization and functioning of Administrative Courts... "which dates on 2012) and to analyze the judicial practices provided from administrative courts of these countries. This article aims to serve to the growing trend of many countries for the establishment of specialized courts, or such sections within ordinary courts, which will deal with judicial review of administrative acts. The countries which are working on establishment of administrative courts and on providing new administrative procedural rules, usually encounter difficulties on interpretation and on the implementation of new legislation. This transitory state does not favor citizens who are the most affected group in the rule of law. The article will give appropriate recommendations based on the achieved results from the methodology of comparison and analysis of administrative courts' subject-matter competences of above mentioned countries.

**Lavinia-Olivia Iancu**

Lecturer, Tibiscus University of Timișoara, Romania

### **The Opening of the Insolvency Procedure: Theory vs. Practice**

The exit from the market of debtors who no longer deal with maturing payments is legally regulated in most countries around the world. The first modern regulation of the insolvency procedure in Romania is found in 1995 and it suffers to date many modifications meant to keep the insolvency procedure in direct connection with the socio-economic reality.

The special attention paid by insolvency lawmaker, but also its continued development over 20 years, would require a clear procedure for all parties involved. The opening of insolvency proceedings is accessible to debtors who recognize their financial difficulty, but also to creditors under certain conditions expressly laid down by the Insolvency Law. Although the legal text in a first reading seems to be lacking in ambiguous interpretations, its application in practice has raised a number of difficulties, quantified in completely different jurisprudence.

The unit of jurisprudence in legal matters is an imperative of any state. The lack of consistency of judicial practice generates an undesirable phenomenon, the insecurity of the legal circuit translated into the decline of the Romanian citizens' confidence in the act of justice. The law must have the same meaning for all.



**Jelena Kasap**

Senior Teaching and Research Assistant, Josip Juraj Strossmayer  
University of Osijek, Croatia

&

**Visnja Lachner**

Assistant Professor, Josip Juraj Strossmayer University of Osijek, Croatia

## **Legal and Historical Overview of the Development of the Process of Forced Execution of Claims in Croatian Law**

Although modern legal science, both Croatian and comparative, is familiar with the well-defined legal institute for forced settlement of claims that is realised within the framework of a special procedure governed by the Enforcement Act, the historical context of the development of the institute in question, albeit unfounded, was not so unequal. It is well-known in numerous legal-historical researches that the emergence of the first forms of forced settlement of claims can be established in antique legal systems, however, the characteristics inherent in that institute and appropriate for modern legal interpretation begin to be individualized in medieval law. When it comes to Croatian mediaeval law, one should bear in mind that means of unique legal sources cannot interpret the determination of the mentioned institute. For this reason, the subject of analysis in this research will be the provisions of the medieval statutes of our coastal towns and the customary right which through the Werbóczy's Tripartitum was worth in the area of Slavonia and Croatia. Provided that the solutions used to enforce compulsory settlement in some of the sources that we are dealing with in this research are characterized by common features (with some variations) in this research we are going to describe and critically analyze the provisions relating to the composition and jurisdiction of the bodies that conducted the procedure, the order of settling as well as the consequences of non-payment of claims in special proceedings.

The purpose of this research is going to be realised by the fulfilment of obvious gaps in Croatian legal and historical science when it comes to the development of enforcement proceedings. It will establish a safe foundation for studying the institute of contemporary law.

**Ivan Kosnica**

Assistant Professor, University of Zagreb, Croatia

## **Social Rights in the First Yugoslavia (1918-1941): Tradition, Model and Deviations**

The paper aims at deeper understanding of the system of social rights in the First Yugoslavia in the period from 1918 until 1941. The research begins with elaboration of tradition of social rights on Yugoslavian territories before 1918. The basic presumption for this period is limited state intervention in the area of social rights, and argument that social rights were primarily connected with municipalities and other institutions, but not state. Further we elaborate significance of the first Constitution of the Monarchical Yugoslavia (1921) for establishment of system of social rights given by the state. Here, we argue that the Constitution was result of foreign influences, specifically the Weimar Constitution, and direct consequence of the First World War. Ten years later the king Alexander Karađorđević enacted the new Constitution of the Kingdom of Yugoslavia (1931). The Constitution was enacted in circumstances of the Great Depression. Economic decline directly affected regulation of social rights in a way that constitutional obligations of the state have been significantly reduced.

Further analysis goes beyond constitutional norms and looks at legislative models established in the period from 1918 until 1941. Here, we make detail analysis of arrangements of social rights given by the state and look at effects of such arrangements on society. In addition, we search for deviations in the system of social rights, a certain discrepancy between constitutional norms and legal reality in which authorities in Belgrade favored certain groups of citizens in admission to social rights. Here one of conclusions is that the authorities understood social rights as a tool for maintaining of desirable political order while principles of equality and humanistic principles were sometimes overshadowed.

**Bence Krusoczki**

Graduate Student, University of Szeged, Hungary

**The Practical Implementation of the Unfair Competition in  
the Arbitration Institute of the Budapest Chamber of  
Commerce**

Actually, the unfair competition is the part of competition law, which deals the safety of economic competition and protects the consumers. Long time ago this differentiation is not existed. Hungary was similarly as the area of industrial states, then England, French, Belgium or Italy, who were provided protection against unfair competition under the general civil law. However, the regulation in the purely civil law in our country has not been enough. Hungary made of a specific act, which ensured the protection against the unfair competition. The primary aim of my research was the examination of court practice, and I would like to find out the successfulness to this specific act.

After the processing of the unfair competition laws of the Arbitration Institute of the Budapest Chamber of Commerce established that the regulation has reached the aim, because it could be providing proper protection.

**Denes Legeza**

Deputy Head of Department, Hungarian Intellectual Property Office,  
Hungary

## **Mechanical (Reproduction) Right of Musical Works in the *'Belle Époque'***

After Johannes Guttenberg, we had to wait for centuries for inventions that could bring significant novelty in the reproduction and distribution of literary and artistic works. The Swiss watchmakers' music boxes were like codices, unique specimens, and they were available to the rich. In the middle of the 19th century, inventions such as playing pianos, piano rolls, ariston discs were invented to reproduce musical compositions. Thomas Edison's invention of 1877, the phonograph, has opened new perspectives for recording and replaying sound. Inventions related to literary and artistic works typically have an impact on copyright. Any new invention may create a new type of work (e. g. photograph, cinematograph) or a new economic right (e. g. reproduction, filming, broadcasting). However, the legal recognition of the effect of innovation is the result of a long process.

This presentation deals with the appearance and international recognition of mechanical (reproduction) right of musical works in the '*Belle Époque*', between 1870 and 1914. The first part of the presentation analyses the judicial practice of mechanical right in the United States, in Great Britain, in Hungary and in Austria. On one side, the authors and publishers fought for recognition of their new exclusive right, on the other side, producers of sound recordings argued for staying in the public domain.

The second part of the presentation examines the mechanical right in multilateral relations (Berne Convention) or in bilateral relations such as between Hungary and Austria, or Hungary and the United States.

**Michael P. Malloy**

Distinguished Professor and Scholar, University of the Pacific, USA

**Interdisciplinarity:  
Classic Crossover Cases and Effective Law Pedagogy**

Interdisciplinary approaches to law school instruction have become the focus of much scholarly study in recent years. This paper examines the justifications and rationales that have been offered in support of interdisciplinary study, as well as cautionary counter-arguments offered to question the value of such approaches. The paper then examines interdisciplinarity within the law school curriculum and considers situations in which classic cases that are iconic in one field of law study can become the point of entry into another field. In this regard, the paper highlights *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), a classic constitutional law case that celebrates its bicentennial in 2019. This case, which establishes the rubric for federal exercise of “necessary and proper” constitutional authority, is also the point of entry into the study of financial services regulatory law. The paper concludes that an interdisciplinary approach to classic cases can make other, technically challenging areas more accessible to students.

**Igor Materljan**

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Court of Justice of the European Union, Luxembourg

**Arbitration Clauses Contained in Bilateral Investment  
Treaties Concluded between Member States of the European  
Union**

The number of investment agreements at the international level is mounting. They all embody a dispute settlement mechanism granting foreign investors the right to seek redress for damages arising from alleged breaches by host states outside their national judicial systems. The interest for the investor is evident: the resolution of investor-state disputes through a mechanism governed by international standards and procedures and which is not subject to the influence of the host state.

The main concern in this paper are arbitration clauses contained in bilateral investment treaties concluded between Member States of the European Union. According to these clauses, an investor from one Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept. The paper addresses the problem of compatibility of these clauses with the EU law in light of the most recent case law of the Court of Justice of the European Union.

Article 344 of the Treaty on the Functioning of the European Union obliges Member States not to submit a dispute concerning interpretation or application of the EU Treaties to any method of settlement other than those provided for in the EU Treaties. The question that arises is whether the investor-state dispute falls within its scope of application or the provision is reserved to disputes between Member States only.

The paper focuses on the legal status of arbitral tribunals established by bilateral investment agreements within the judicial system of the European Union. Considering the characteristics and the subject matter of disputes submitted to these tribunals, it may be questioned whether they constitute disputes on the interpretation and application of EU law. The question also arises whether these arbitral tribunals, when applying EU law, have exclusive competence over the dispute or their arbitral awards are subject to review by a court of a Member State and can be set aside.

The paper addresses the principle of autonomy of EU law and the exclusive competence of the European Union over its application. In that context, since the case law of the Court of Justice appears hostile towards investor-state dispute settlement agreements, the paper analyses under which conditions the creation of a dispute settlement mechanism would be compatible with EU law.

**Vladimir Orlov**

Professor, Herzen State Pedagogical University of Russia, Russia

## **Legal Sources and Interpretation in Russian Civil Law**

Russian civil law shares the continental law tradition. Continental law is characterized as a normative legal system, basically emerged in the antique world due to the emergence of alphabetic writing and dialogic communication, that functions through the jurisprudence, where legal sources and interpretation are applied. The French *la dictature de la loi* and the German *Begriffsjurisprudenz* still form the conceptual basis of the Russian civil law. The dominance of the legal positivist approach, and consequently, the overemphasized role of the statutory law and dogmatic interpretation of the legal material are, in general, specific for Russian law, whereas the efforts towards the internalization and globalization of law in Russia are still more declarative than real. Nevertheless, the pragmatic approach, enforced in the judicial practice, and the recognition of this and custom as legal sources as well as the equity consideration in the legislation, have been introduced by the recent novelties to the Civil Code. But these changes seem to form a challenge for the Russian legal system and particularly for the doctrine, the position of which has become even weaker than before. And as foreign languages are generally ignored in the country, the Russian legal discourse seems to have remained domestic, strongly bounded to the traditional legal positivism.

**Phindile Raymond Msaule**  
Lecturer, University of Limpopo, South Africa

## **Who Guards the Guardians? Revisiting the Judiciary's Accountability and the Rule of Law**

This paper analyses the constitutionality of judicial officers' near absolute immunity from being held liable for wrongful decisions. In South Africa, members of judiciary are generally immune from delictual claims that may arise from their judicial functions. Such immunity seeks to encourage and strengthen judicial independence under which judicial officers perform their functions without fear of repercussions for wrongful decisions. Although this policy is sound, the fact that it is near absolute raises some fundamental questions given the supremacy of the Constitution and fundamental values grounded in the rule of law. The Constitution vests the judicial authority in the courts, which ought to be independent and subject only to the Constitution and the law. Courts are also required to apply the law impartially without fear, favour or prejudice. The proponents of judiciary's immunity have argued that burdening the judiciary with the fear that it may be held delictually liable for outcomes emanating from their judicial conduct will distract from these sound public policy considerations.

In the state rooted on respect for human rights and accountability, is it sound to exclude a sect of society from being held accountable for its conduct? More so, the section that is at the apex of ensuring that human rights are protected and that government and the citizenry are held to account for their actions. Should not this presuppose that accountability on the part of the judiciary must be higher than on other organs of state? It is impossible that the judiciary can carry out its work without, at least, innocent errors in the process of their judicial functions. It is not perfection that must be expected of judges but a degree of accountability for their conduct.

This note argues that a window for the possibility of holding the judiciary accountable for their decisions must be opened in clear cases where members of judiciary have deliberately or gross negligently failed to perform their functions, effectively violating their oath of office. A deliberate failure (or gross negligence) to observe this oath which results in egregious violation of the rights of an individual ought to bear legal effects, even if it means through delictual claims. The need to prove malice in the delictual action against members of the judiciary has proven to be an insurmountable hurdle to holding members of the judiciary accountable.

Failure to subject the conduct of the judiciary which violates the rights of others to some accountability processes inadvertently compromises judiciary's role as the guardian of the Constitution. It is contended that



opening the avenue for claims against the judiciary will enhance the standard and quality of their work. Failure to recognise this simply presupposes that the judiciary is concerned about self-preservation.

**Mate Petervari**

Assistant Lecturer, University of Szeged, Hungary

## **The Establishment of the Districts in Hungary after the Austro-Hungarian Compromise**

After the Austro-Hungarian Compromise of 1867 Hungary regained independence and consequently civil reform of the state was started on the basis of the April Acts of 1848. The legislator wanted to create an administrative system which was able to execute the acts and decrees on the lowest, local levels. The majority in the Parliament achieved this goal by implementing by the Act 42 of 1870 and Act 18 of 1871.

The need for modernizing the administrative system resulted in the reshaping of feudal territorial division, thus redrawing of the districts' territories was also put on the agenda during the Act's implementation. The districts were the lowest levels of the counties' organizations. I examined the archive material of the Hungarian Royal Ministry of the Interior (Hungarian National Archive, Documents of Ministry of the Interior K150 117., 118. bundles) which implied the drafts of the Hungarian counties about the public administration organization and the controlling of the Hungarian Royal Ministry of the Interior. I would like to present the attribute of the new Hungarian district system on the basis of the Act 42 of 1870.

**Mashele Rapatsa**

Lecturer, University of Limpopo, South Africa

**The Complementarity of the Capabilities Approach and  
Therapeutic Jurisprudence: An Analysis of the Role of South  
Africa's Constitutional Court in the Interpretation and  
Enforcement of Human Rights**

For years, the subtle role played by South Africa's Constitutional Court in interpreting, applying and enforcing human rights norms has not been adequately explained, at least methodologically speaking. This may be attributed largely to the fact that legal research has historically been doctrinal in nature and approach. But things have changed, and continue to change for the better. That is, human rights and social justice activists are now being indicted to methodologically understand and theoretically explain how legal rules impact on people's social lives, and how social issues influence legal developments in general. Therefore, this paper seeks to explore prospects of relying on Nussbaum's Capabilities Approach and the theory of Therapeutic Jurisprudence to explain the activist stance adopted by the Constitutional Court in interpreting, applying and enforcing human rights norms. This is mainly because the Capabilities Approach has long been described as another species of human rights approach, and has been relied upon in studies concerning evaluation of human well-being. On the other hand, Therapeutic Jurisprudence has been described as an instrument which adds necessary impetus to the law as a therapeutic agent. That is, it provides theoretical foundation within which courts may rely on legal rules or principles to creatively found corrective solutions that promote the well-being of humans. The paper shall adopt a theory based analysis, relying fundamentally on Karl Klare's social change phenomenon, which has been used to describe South Africa's Constitution as a transformative instrument.

**Jose Geraldo Romanello Bueno**

Chairman, Civil Law Department, Mackenzie Presbyterian University,  
Brazil

**Anonymous Childbirth**

The anonymous childbirth and the protection of personal right will be the subject of this paper. The theme of anonymous birth motivated the proposal of two project law in the Brazilian National Congress , in order to regulate this Institute in Brazil. There are many doctrinal discussion on this subject, since the adoption of the law already provides the possibility of the mother give her child up for adoption, which would generate a legal contradiction on the approval of the Anonymous Childbirth Act. It is also discussed the right of knowing or denying their genetic origin by the mother who gave an anonymous birth. A comparison among Brazilian, Italian and German law is also documented in this paper.

**Roni Rosenberg**

Senior Lecturer, Ono Academic College, Israel

## **Revenge Porn in Criminal Law**

In 1998, the Israeli legislature enacted the Prevention of Sexual Harassment Law, which dramatically heightened awareness of the legal and ethical offenses inherent in sexual harassment. As the law evolved, Amendment 10 was passed. Under this amendment, in certain circumstances publication of a photograph, video, or recording of a sexual nature without permission constitutes sexual harassment and is punishable by a maximum of five years in jail. The amendment was passed in recognition of the fact that the virtual realm provides fertile ground for sexual offenses. While in the past, the impact of publication of offensive material had been limited in scope, in that it was not easy to locate, and usually resulted in localized harm for a short period of time, with the advent of the virtual realm, dissemination of a photograph now resulted in boundless, irreversible (and sometimes not even technically deletable), and ongoing damage. At the same time, the ease of use of the Internet, social media, and messaging applications create an accessible and convenient platform for the dissemination of sexually offensive photographs. Thus, these problematic behaviors have become widespread. As such, it quickly became clear that there was a need for a legal mechanism directed at such behavior so that the Internet would not become a lawless domain. The severity accorded to this phenomenon is reflected in the penalty imposed, five years imprisonment. This is among the highest penalties mandated by the Prevention of Sexual Harassment Law.

American jurisprudential literature includes different opinions as to whether it is appropriate to criminalize "revenge porn" or leave it to the realm of civil litigation. Prior to 2012, only three U.S. states had criminalized such activity, but by 2015, while there was still no federal law against it, thirteen states had indeed passed laws criminalizing such activity by 2015. In 2013 California criminalized activities that fall into the revenge porn category. A person who disseminates media that includes images of intimate parts of someone else's body, where that individual is identifiable, and where the parties had agreed that the media would remain private, is subject to six months in jail and a fine of 1000 dollars. Elements of the crime include the intent to cause serious emotional distress and that the victim did indeed suffer such distress. A similar requirement exists in Colorado, which in 2014 criminalized "posting a private image for harassment." This offense prohibits publication of intimate photographs of a person over the age of 18, who is identified or can be identified, on social media or other web sites, where: (1) such publication is intended to harass or cause serious emotional distress upon the person depicted in the photograph, (2) such publication was against the will of the person in the photograph or there was reason to believe that

the subject would not agree, (3) and publication did indeed cause such emotional distress.

In Israel, the offense is broader and does not require intent in order to convict. Similarly, there may be criminal responsibility even without the exposure of intimate body parts. In my presentation, I will present a more detailed description of the differences between the Israeli law and that of various states in the U.S. and will discuss the interpretive and legal difficulties raised by this law. I will also touch upon how to apply the law to WhatsApp transmissions and considerations regarding trying and convicting Internet service providers.

Suggested solutions, with their underlying rationales, may assist both legislators and courts to consider how best to apply the law and highlight the law's significance as an important tool in dealing with this serious problem that has the potential to result in significant harm both to individuals who are targeted and to society as a whole.

**Rimante Rudauskiene**  
PhD Student, Vilnius University, Lithuania

## **Green Public Procurement in Lithuania: Legal Aspects of Regulation and Practice**

Green public procurement has emerged as a new legal concept in Lithuania owing to the obligation under the EU law to integrate environmental protection requirements into the definition and implementation of the Community policies, in particular with a view to promoting sustainable development, as well as respective EU directives on public procurement, establishing the legal framework for consideration of environmental concerns in public procurement. Nonetheless, despite embracement of environmental considerations in national public procurement regulation and introduction of various legal possibilities to implement green public procurement, in Lithuania the legal status of green public procurement remains somewhat vague, many legal uncertainties still surround the concept, green public procurement is not widely practiced and the implementation of it is relatively low in regard with other front-runners in this field in the EU. Even though various aspects of regulation of environmental concerns in public procurement law attract considerable academic attention in general, in Lithuania this topic is well under-researched.

Constantly evolving legal nature of public procurement, changing legal framework, new environmental concerns give ground to research legal aspects of regulation and practice of green public procurement in Lithuania as this would open doors for better understanding, application and wider use of it. The main issues to be discussed are:

- legal aspects of evolution of public procurement: from classic procurement to green procurement in Lithuanian law, disclosing legal tendencies and practices, examining various functions of this instrument, legal status and nature;
- legal definition of green public procurement and considerable problems it causes, arguing that there is a gap between the legal notion of green public procurement and other environmental considerations in public procurement;
- the emerging dichotomy in sustainable public procurement, providing grounds to view green procurement and social procurement differently since environmental concerns are far more easily integrated in public procurement regulation and practice.

It is suggested that some aspects of Lithuanian green public procurement regulation and practice should be revised and reconsidered, in particular elimination of legal uncertainties, adoption of a more consistent definition of

green public procurement, in practice - recognition of an equal status of green public procurement in relation to other functions of procurement, evident and clear distinction of green and social procurement.



**Claudio Sarra**

Associate Professor, Università di Padova, Italy

**The Italian Declaration of Rights in the Internet and the European General Data Protection Regulation on Decisions based on Automated Processing: First Steps against the Data Mining Abuse?**

Data Mining (DM) is defined as the analytical activity aimed at revealing new “knowledge” from data, highlighting non-trivial patterns useful for further implementation in decision-making processes. These activities have recently acquired enormous importance in the development of more modern business strategies as they seem to fit perfectly the requests of the so called “Data Driven World”. But along with the enthusiastic explosion of DM techniques in every field of research and practical economic applications, some criticisms have also been raised focusing in particular on the uses of DM by powerful economic agents, and on the consequences of the inner highly discretionary choices that the analyst or the data collector are bound to make in order to make the DM possible. In this paper, first I briefly give an overview of DM, and of some of the most relevant criticisms raised so far. Then I focus on the most problematic issue of DM, that is the ambiguous use of the term “knowledge”, eventually taking into consideration two very different normative acts, the Italian *Declaration of Rights in the Internet* (2015) and the European *General Data Protection Regulation* (2016) in order to evaluate if we can find there a minimal form of legal protection against the most relevant hypotheses of DM “abuse”.

**Kristof Szivos**

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## **Historical Basics of '*Eventualmaxime*' in the Hungarian Civil Litigation**

The Hungarian Parliament enacted the new Code of Civil Procedure on 22 November 2016. During the codification, the importance of the historical basics of the civil procedure and the achievements of European legislations were emphasized. One of the most notable features of the new Code is the application of the structure of 'divided litigation', which means that the proceeding before the courts of first instance is divided into two parts: the contestation and the main hearing. One of the main principles of contestation is the *Eventualmaxime*, which involves the obligation of proposing all statements, pleas and/or proofs together in an interval or term. The violation of this rule results in the application of the statute of repose. The *Eventualmaxime* had not been applied as a main rule since 1911, and it has not been applied at all since 1952. The paper introduces the historical basics of this legal institution. Firstly, it examines the theoretical features including the analyzation of the definition. It emphasizes the reasons behind the necessity of the *Eventualmaxime* as well. In the second part, the paper introduces of presence of this principle in the Code of 1868, where it became the main directive principle in the ordinary procedure before the regional courts. It also points out that it was not applied in the proceedings before the local courts. During the codification in the late 19<sup>th</sup> century, *Eventualmaxime* was evaluated, and as a result it was not applied as a main rule in the Code of 1911. In the final part, the paper focuses on those regulations where the Code of 1911 applied this principle to intensify the effectiveness of civil litigation.

**Cornelius Van der Merwe**

Research Fellow/Emeritus Professor, University of Stellenbosch /  
University of Aberdeen, South Africa

**Should Short-Term Letting be Allowed in Condominiums?**

Increasing numbers of condominium owners who bought into condominiums for the purpose of investment are exchanging traditional long-term leasing for private holiday letting. The recent surge in popularity of websites such as Airbnb and Stayz enables owners to market their apartments to millions of holidaymakers from all over the world. Not only investor owners jump on the bandwagon but also residential owners and tenants start letting out spare rooms and even couches to supplement their income.

In condominiums designed for short-term letting and boasting hotel facilities, the impact of a handful of owners operating their own short-term rentals has a minimal effect on unit owners and owners' corporations. The greatest impact is experienced in relatively small condominiums with permanent residents and no building manager. In these condominiums, dealing with the potential unplanned impact of short-term letting (including increased noise, illegal parking, overuse of shared facilities, nuisance, drinking and jumping from the roof onto balconies, damage to common property and safety and security issues) can be very time consuming and frustrating for the members of the executive council, the unit owners and the owners' corporation.

In this paper I shall first dwell on the provisions in condominium legislation which deal with short-term letting. I shall then elaborate on the circumstances which militate against allowing short-term letting in condominiums, followed by a brief review of short-term letting regulation in some condominium statutes. I shall conclude the paper with an enumeration of the strict conditions under which short-term letting in my opinion should be allowed in condominiums.

**Norbert Varga**

Associate Professor, University of Szeged, Hungary

## **Regulation and Practice of Hungarian Cartel Law in 20<sup>th</sup> Century**

The practical validation of the Cartel Law 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. The specialized nature of the procedural rules can be viewed as unique in the history of legal action in Hungary, for the civil courts reached verdicts by mainly employing the rules of Bp., according to Statute 68400/1914. I. M. 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. I would like to present the regulation of the Hungarian cartel law special attention to the legal cases.

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## **Personal Data Transfer to Third Countries - Disrupting the Even Flow?**

In the light of the Snowden revelations in 2013, Maximilian Schrems instituted the proceedings against the Irish Data Protection Commissioner which resulted with the invalidation of the Safe Harbour Agreement by the CJEU. The Safe Harbour Agreement, the framework under which EU citizens' personal data were being transferred to the US, was replaced by the EU-US Privacy Shield which put in place rules and procedures for more effective protection of personal data. Apart from the adequacy decisions such as Safe Harbour and Privacy Shield, the Data Protection Directive envisages adequate safeguards, such as contractual clauses and binding corporate rules, and derogations as bases for transfer of personal data to third countries. Despite the fact that these bases are maintained in the General Data Protection Regulation, its entry into force in May 2018 will bring about changes in this respect. It was already suggested that the EU-US Privacy Shield will have to be significantly amended. Furthermore, the validity of standard contractual clauses will be inspected by the CJEU since the Irish High Court referred the question for the preliminary ruling on this matter in October 2017. This paper will analyse the bases and conditions for transfer of personal data to third countries under the new General Data Protection Regulation, compare it to the currently existing regime and pinpoint the matters which might present the greatest challenge for efficient data protection as currently one of the most controversial issues of the EU law.

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## **Shareholders' Derivative Suits against Corporate Directors, Following Cross-Border Mergers: A Functioning Remedy within the EU?**

Throughout Europe, mergers and derivative suits have both been subjects of extensive academic discussion of late. Analyses may abound, yet they all approach each topic only individually; the relationship between the two remains a grey area of European legal literature. This lack of attention is not warranted though. The effect of this corporate transformation on such claims may be radical and might prejudice the very purpose of this minority shareholder protection and directors' accountability mechanism.

This paper identifies the issues arising in derivative litigation following a cross-border merger (CBM) and communicates some tentative thoughts on how they can be addressed by the judiciary or the legislator. The analysis first explains the basic features and purpose of the derivative action, before examining the effects of CBMs on pending and prospective derivative litigation. By considering the laws of EU Member States, it shows that, post – CBM, the merged company ceases to exist and is succeeded by another entity, in a jurisdiction which might -contrary to the merged company's native jurisdiction- not provide for such a remedy, or differ regarding rules intrinsic to the mechanics of derivative claims, as this matter has not been regulated by EU law yet. Therefore, the choice of the applicable law largely determines whether and how a derivative claim may be brought or (dis)continued. It is also explained that a merger may result to discontinuation of a claim (as a derivative one) due to restrictions on shareholders' legal standing, such as continuous ownership and minimum shareholding thresholds, common among most European jurisdictions.

Given the role of the derivative suit within the system of checks and balances in corporate governance and its potential in compensating and deterring misfeasance, this paper argues in favour of ensuring that CBMs do not unduly deprive shareholders of such remedy.