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Business, Economics
And Mercantile Law
Selected Issues

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Introduction

David A. Frenkel
Anna Chronopoulou

The classical division between business law, economics and mercantile law has been blurred. Time has come when we should look at them in a broader and more comprehensive way, and not as divided and separate subjects. They are all interwoven in each other.

This book offers a collection of essays which can be classified under all the three and may shed light on various issues that are of current significance.

The essays are revised versions based on presentations at the International Conferences on Law and on Business, Law and Economics, 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 commences with Michael P. Malloy's essay *Risk Management in Financial Services*. In his essay Malloy assesses the extent to which the Federal Reserve System (FRS) revisions adequately conform to the Principles for Financial Market Infrastructures and the Consumer Protection Act of 2010 (Dodd-Frank Act). He argues that the Payment System Risk policy would have useful applications to other regulatory programs involving financial institutions, such as national banks in the United States, which are subject to the authority of the Comptroller of the Currency rather than the FRS.

The second contribution is Vicenç Ribas-Ferrer's essay *Corporate Governance in European Listed Companies and Financial Institutions*. Ribas-Ferrer discusses corporate governance in listed companies and credit institutions from the perspective of European Union law. He shows that progress has been made with the specific principles of corporate governance for banking and other financial institutions, and with the duties and functioning of board, risk management and remuneration policies.

After the Basel Accord of 1988 (Basel I), and the cases of Enron and WorldCom (both in 2000), the Sarbanes-Oxley Act was consequently enacted (SOX - 2002) elevating the internal control structures of the legal duty of corporations that wish to become public companies and trade in the open market. Given this new context, and the needs of the market, it was necessary for these legal institutions to evolve and create internal control structures. In the next essay, *Compliance: Will it Exempt the Administrator from Responsibility?* Débora Ribeiro Sá Freire examines compliance in the context of the Brazilian society on the 21st century.

In the fourth essay, *Sanctions for the fraudulent directors in the insolvency procedure in Romania*, Lavinia-Olivia Iancu examines the recent Romanian

legislation on insolvency, from 2014, regarding the sanctions for fraudulent directors. She states that although a harsh punishment be found for the dishonest or fraudulent directors, as far as he institutionalised non-patrimonial sanction was concerned, she is criticising the severe, irremediable and inflexible solution enacted by the Romanian Legislature.

Claudia Ribeiro Pereira Nunes and Maria Leticia de Alencar Machado, in their essay *Transnational Insolvency in the OGX Case International: Territorialist or Universalist model?* Address the problem that arises from lacking regulations in transnational insolvency in Brazil. In their essay they explore the need for specific laws regulating it, and examine leading theoretical models proposed to deal with transnational insolvency territorialism and universalism. Their essay also highlights the OGX case and provide actionable solutions to better address the controversial issue of transnational bankruptcy.

Angayar Kanni Ramaiah is the authoress of the sixth essays on *Fair Competition Law and Policy in the Rise of Asean Economic Community (AEC) on SME in Asean: Some Critical Observations and Recommendations*. In her essay Ramaiah addresses and discusses some critical aspects of the legislation on competition and its implications on Small and Medium Size Enterprises in ASEAN.

The seventh essay is *Facts on the horizon: Future German Ink and Mineral Oil Ordinance. A national approach and its European spill over: Risk management, compliance and avoidance of liability*. The authors, Matthias von Juterzenka and Thomas Heupel, analyse the recent new German legalisation – German Ink Ordinance to come into force in 2017/18. As explained by the authors, the new law will improve protection for consumers ensure consistent implementation of directives and on-the-spot controls on food and animal feed. The authors give an overview of the current status of the German Ink and Mineral Oil Ordinance still to come in relation to recent and future risk management according to the liability risk of the regulation's future content. The essay sets out recommendations for action, which are suitable for company's risk management and provide guidelines for early adopters.

The next essay is *Companies in the export and import sector analysis: a historical import economic legacy in the XXI Century* written by Cláudia Ribeiro Pereira Nunes and Kaiser Motta Lucio de Moraes Junior. The authors provide a historical account of the Brazilian import and export market as an agent of development of Brazil in the second half of the 20th and early 21st centuries.

The final essay in this book is *Modernising Transfer Pricing Rules: as useful as moving the deck chairs on the Titanic* by Elfriede Sangkuhl. Multinational Enterprises operating in Australia are routinely underpaying taxes by shifting their profits to no and low tax jurisdictions. The Australian transfer pricing rules have been modernised to align with the recent changes made to similar rules promulgated by the OECD. However, Sangkuhl shows in her essay that this change in the transfer pricing rules will not prevent Multinational Enterprises from avoiding tax in the future.

We hope that the readers will find this collection of essays stimulating and insight reading. 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.