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A Comprehensive Anthology of Law – Ethics – Business

Edited by

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Introduction

David A. Frenkel

This book offers a selection of essays which shed light on various issues in the fields of law, ethics, and business.

The essays are mainly revised versions based on presentations at the International Conferences on Law, on Ethics and on Business, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece, in 2022 and 2023. The essays in this volume have been selected after a process of blind-review on the basis of the reviewers' comments and the essays contribution to the ongoing discussion of the respective issues.

Scholars from across the world have proved their willingness to get together and discuss and talk about law, ethics, and business issues.

Traditional boundaries have become permeable. We live in a transparent, influenceable and pervious world. The responses of the legal systems, the ethics and the business world to current developments are of the great and serious challenges of our time. The authors of the essays collected for this anthology seek to analyse some of these challenges.

The book commences with **Massimo Bianchi**'s essay ***Network Analysis and Control System in Mega Projects. The Case of PICASP Erasmus Project.*** Network Analysis achieved some significant results in recent years thanks to advances in technology and in the approach to organisational networks. Less exciting were the results obtained with Mega Projects. These projects show high risk with regards to results, to the compliance of the budget and to the realisation of the entire project. This essay examines the proposal to transfer some results of network analysis to the performance monitoring of Mega Projects. Starting from the case of Erasmus PICASP Project for the creation of Pilot courses and new didactics for teachers training in cultural tourism for the development of Caspian Area, the essay proposes an evolutionary model of cycles of simplification and complexification of the networks control systems.

José Manuel Castillo López has authored the second essay ***An Economic Perspective of the Justice Digitalisation Process: The Questions of Efficiency and Equity***. The general problems of the Judicial Administrations in Europe are profound and diverse. But perhaps the most relevant and evident are the time delay in legal resolutions and the influence of economic conditions of users both regarding simple access to the Judicial Administration and in the very sense or result of different legal proceedings. The digitalisation process of the Judicial Administration is bringing with it perceivable changes in the efficiency of the system, deriving from better access to information on legal proceedings on the part of citizens, deemed on the whole to be positive and, deriving from it, improvements in the functioning of the economic model. Nevertheless, on the side of iniquity as regards access to justice and legal resolutions, the "inequality of arms", the available predictions and studies are inconclusive, putting forward, furthermore, serious concerns regarding the effect on legal guarantees and the right to honour and privacy of citizens. In this study, which is interdisciplinary in nature, the

author preferentially uses the perspective and instruments of the Economic Analysis of Law to address and substantiate the aforementioned questions.

The third is **Vladimir Orlov**'s essay ***Dispositivity in Russian Business Law***. The principle of dispositivity is developed based on the concept of party autonomy that is characteristic of civil law regulation that covers business activities and is realised through the application of, in addition to directly applicable imperative norms, dispositive norms that imply the freedom of the parties to perform (to acquire, realise and dispose of) their rights on their own discretion. Essentially important in realisation of the principle of dispositivity in the civil law are also initiative norms through the application of which the civil law relations emerge, change and cease. Related particularly to the contract and corporate law regulation in Russia, the traditional totality of the legislative law has been challenged in the pragmatic approach supported by the Russian highest judicial body. In particular, the favouring of the principle of dispositivity in respect to business law regulation, by the concentration of the valuation of the dispositivity of a legal norm in the sphere of successive control, instead of previous control, actually promotes the real freedom of business activities, and makes the regulation flexible. This is particularly important for small and family enterprises that are very common in Russia.

Maria Luisa Chiarella and **Manuela Borgese** have authored the fourth essay ***Data Act: New Rules about Fair Access to and use of Data.*** As stated in the essay, the constant increase in products connected to the Internet corresponds to an increase in the volume of data generated, the content of which represents a fundamental resource both for technological and economic evolution and with a high impact for businesses, citizens, and the public sector on the whole. This is the underlying motivation behind the approval of the new EU Regulation adopted on 27 November 2023 - the *Data Act* - which aims to create a European regulatory framework based on clear rules on data sharing, a fair and guided data economy in the European Union.

The author of the fifth essay ***An Examination of Proactive Intelligence-Led Policing through the Lens of Covert Surveillance in Serious Crime Investigation in Ireland*** is **Ger Coffey.** The author examines the powers and functions conferred by the Criminal Justice (Surveillance) 2009 Act to bolster the resources of the Ireland's National Police and Security Service to detect, investigate and apprehend suspects. The analysis encompasses the management and use of covert surveillance operations, procedural requirements for external 'authorisation' to carry out surveillance with judicial oversight, internal 'approval' to carry out surveillance without judicial oversight, and the use of tracking devices as less intrusive measures. While the focus of analysis is on police covert surveillance operations in Ireland, reference to international best practice and human rights standards emanating from the Irish superior courts and ECtHR jurisprudence will broaden the scope of analysis that is intended to be of interest to a wider readership.

Covid influence in Insolvency in Romania is the title of the sixth essay authored by **Lavinia-Olivia Iancu.** The Covid pandemic installed at the beginning of 2020 influenced the matter of insolvency. A series of measures were adopted to protect de debtors already insolvent on one hand, and new procedures were established on the other hand to ensure the ongoing insolvency proceedings. We can observe a special attention of the legislator in protecting legal person debtors

compared to natural person debtors. Although the pandemic deeply affected citizens, they did not access the insolvency procedure of the natural person. The Romanian legislator did not intervene in the modification of the legal text, although the doctrine claimed a complicated procedure, with generally unattractive and interpretable notions. Although a year has passed since the end of the state of alert in Romania, and the effects of the pandemic are still visible, the method of administering insolvency procedures that offers effective solutions implemented during Covid period has been preserved.

Elena Emilia Ştefan is the authoress of the seventh essay - ***News and Perspectives of Public Law***. Since the earliest classic division of law into public law and private law, envisioned by the 3rd century Roman legal expert Ulpian, interdisciplinarity as a fundamental feature of the law has currently become noteworthy. The recent exceptional pandemic situation that we have faced has revealed once more that reference to society can only be made by resorting not only to law but also to ethics and morals. Public authorities have often found themselves in the position of making administrative decisions for the population, objected by the great majority, as fundamental rights have been restricted for short periods of time. This essay addresses a current topic of interest, namely Considering interdisciplinarity, can we speak nowadays of a new public law? If so, what should we do with the old law? Should we discard it or rebuild it? The authoress answers herein by using research methods specific to law, in order to emphasise the conclusions according to which the measures for good administration carried out by public authorities must express both the letter of the law and the spirit of the law, taking the general interests of society into account.

Elena Emilia Ştefan has authored also the eighth essay **– *Climate Change - An Administrative Law Perspective.*** Given the astonishing speed at which society and nature are changing, the issue of climate change can no longer be analysed solely from a legal perspective, but also from an ethical one. It is important to address the phenomenon of climate change, as it has become so widespread in recent years that we are now witnessing litigation involving not only individuals and authorities but also states. The occasion for this analysis is the news in the media according to which, in Romania, in January 2023, the first action was brought before the contentious administrative court against the Romanian state for not adopting measures to combat climate change. The theme is topical and relevant for both legal professionals and private individuals. The scope of the study has been to investigate the extent to which ethical values, such as respect and responsibility, are intertwined with legal analysis of environmental issues and can help find a solution to mitigate damage caused by climate change.

Competition Law, Ethics and Corporate Social Responsibility is the title of the ninth essay authored by **Ioan Lazăr.** The author points out the importance of corporate social responsibility (CSR) activities that has increased in recent years. More undertakings active on different markets are becoming aware of the importance of improving labour policies, investing in safety training of employees, environmental protection, local community-related projects, volunteering, and charitable activities. The author analyses whether higher levels of competition will increase investments in CSR activities to create trustworthy firms that will survive even in economically harsh periods, or will otherwise reduce the aforementioned

types of investments and thereby facilitate the flourishing of anticompetitive practices on the market.

The tenth essay, ***Neurological Aspect of Ethics and Integrity: A Fundamental Compound Element of Law and Tax Compliance*** has been authored by **Emmanuel K Nartey.** The author examines the ethics and integrity approach to modelling the law and tax compliance process and investigates different factors that influence legal and governance systems in society. The approach of this essay is designed to briefly demonstrate how ethics and integrity in the law and tax compliance could lead to effective legal and governance systems. Ethics and integrity can be thought of as the infinite member of all legal rules and governance systems. The author conceives that the law and tax compliance does not stand alone. The extension of the law and tax compliance is ethics and integrity, or the extended part of moral conduct in society.

Emmanuel K Nartey is also the author of the eleventh essay ***Enforcing the Legal Principle of Duty of Care in Corporate Human Rights Violations and Environmental Damage Cases in Developing Countries.*** The author's view is that corporate accountability for human rights violations in international legal systems has proven to be a watershed, mainly because there are inadequacies in the existing accountability mechanisms as well as several other legal problems and factual obstacles that hinder the enforcement of human rights law and international criminal law. This is also attributed to the problematic issues that persist, particularly with respect to the following: corporate criminal liability, the extraterritorial application of law, the attribution of criminal actions to specific agents, the requirements of accountability, the difficulties of extraterritorial investigations, and obtaining sufficient evidence for human rights violations. The author examines corporate accountability in the concept of the principle of duty of care and analyses the definition of accountability, and discusses the mechanism and the components of accountability as well the legal concept of corporate accountability should include responsibility, answerability, blameworthiness, liability and sanctions.

Graeme Lockwood, Vandana Nath, and **Stephanie Caplan** are the authors of the twelth essay ***Religion and Belief Discrimination at Work: Legal Challenges in the UK.*** As stated by the authors, the UK continues to be more ethnically and religiously diverse. The inclusion of religion and belief within the UK Equality Law framework has been controversial since its inception in 2003. The authors examine the practical and legal complexities associated with religion or belief discrimination in the UK. Drawing on an analysis of religion and belief claims from 2003 onwards and using illustrative case law, the study highlights several thematic areas of litigation relevant to employers, potential claimants and legal advisors. The essay offers insights into the underdeveloped legal debates and variations in how tribunals and the courts have interpreted and applied the law.

The thirteen contribution is **Clément Labi**'s essay ***The Ethical Riddle of Executive Remuneration.*** Excessive executive remuneration causes public unease, debate, and very often legislative initiative. The author states that there could be actually good reasons for that. From times immemorial, betray the trust of a fellow and to take a decision as a judge in one's own cause, have been considered despicable. Those ethical concerns are so "etched in legal nature" that the principles of sanctioning corporate mismanagement and conflicted decision-

making have been considered parts of natural law. Such is not the case of the current (but not novel) concern with compensation "levels" irrespective of the merits of their earners, for which an ethical foundation is elusive.

The fourteen contribution is **Iulia Boghirnea**'s essay on ***Legislative Mechanisms of the European Union and of Transposition into the Romanian Legislation Concerning the Problem of Work-Life Balance for Parents and Caregivers - Sociological Aspects.*** In her essay she analyses the legal framework of the European Union regarding family leaves and flexible work formulas, measures that the Member States must take by transposing the Directive 2019/1158 of the European Parliament and the Council of Europe on work-life balance for parents and caregivers**.** The fact that this Directive replaces the notion of "reconciliation" with that of "balance", and the notion of "family life" with that of "private life of parents and caregivers" is a novelty. The Directive, which had to be transposed by all EU Member States by August 22, 2022, aims to promote and facilitate the reintegration of mothers into the labour market after the period of maternity leave and parental leave, but, in particular: fathers' right to paternity leave, parental leave, caregiver's leave and not least, flexible working arrangements for workers who are parents or caregivers. As for fathers' right to paternity leave, the EU legislator provides that it can be requested around the child's birth date, before or after birth and should be granted regardless of the marital or family status, as will be defined in the internal law of each state. The parental leave granted to fathers can be extended by one or two months, a period of time that cannot be transferred to the other parent. The right to this leave will be guaranteed, by law, to all workers who have parental responsibilities. The authoress analyses also how Romania transposed this Directive into its internal legislation.

ADR and Workplace Conflict - A Podcast Analysis: Nigeria, Britain and the US authored by **Chinwe Egbunike-Umegbolu** is the fifteen essay. As stated by the authoress, the decline of union representation and the introduction of legal incentives for workers to resolve individual employment disputes without resorting to the courts has unequivocally made Alternative Dispute Resolution (ADR) increasingly prominent in the British industrial relations landscape. The conciliation service offered by the Advisory Conciliation and Arbitration Service (ACAS) has been the most important sign and driver of this change. Although ADR has been encouraged in Western jurisdictions, particularly in the United Kingdom (UK) and in the United States (US), as a means to reduce time and litigation costs in relation to employment tribunal claims, the scarcity of scholarly publications, particularly on the benefits of utilising mediation or conciliation to settle workplace disputes is frankly unacceptable. On the other hand, as stated by the authoress, Nigerian workers or employees are not encouraged or have little or no awareness of resolving workplace disputes or conflicts via ADR. The authoress employs a comparative and podcast analysis of workplace disputes in Nigeria and Britain, focusing on the different patterns of settling Workplace Conflicts such as discrimination, bullying and harassment.

Marzia A. Coltri has authored the sixth essay - ***The Ethical Dilemma with Open AI ChatGPT: Is it Right or Wrong to Prohibit it?*** Digitalisation and innovation in learning and research are rapidly becoming crucial drivers of society's sustainable and progressive growth. AI's technological advancements and landscapes have significant strengths, and their diversity and quality have grown in

recent years. This has facilitated the impressive development of AI apps and software, such as ChatGPT, which has become popular around the world. It is an Open AI access to users in education to generate essays, song lyrics and stories. It is an AI language model that can understand and generate human-like responses to text inputs, making it a valuable tool for various economic and cultural applications. The authoress examines the ethical dilemma of banning ChatGPT. Using a range of argumentative examples as some possible ethical issues may arise in the use of AI-powered chatbots include concerns about data privacy, algorithmic bias, and the potential for chatbots to replace human interaction and support. Some of the main question are can OpenAI's cutting-edge technology and tools truly help corporate operations and institutions, and improve decision-making and can it also give students and researchers significant resources to help them develop their knowledge, critical thinking skills and understanding in a variety of fields? The authoress points out that on the one hand, allowing ChatGPT to operate freely could lead to unintended consequences, but it could also promote innovation in the field of AI. Ultimately, finding a balance between regulation and innovation is key to maximising the benefits of ChatGPT while minimising its potential harms.

The seventeenth contribution, ***Legal Developments as to "Cyber Grooming" Actions from the Lanzarote Convention to Now*** has been authored by **Merve Duysak.** According to statistics, internet users have been increasing rapidly, especially since the COVID 19 pandemic. Nowadays minor users, encouraged for educational purposes, are particularly often the target of cybercrimes. One such offense is approaching a child through information and communication technology for sexual purposes, known as cyber-grooming. Even though this is a new type of criminal behaviour, there are already international and national criminalisation norms in place to penalise it. The Lanzarote Convention is the first international legal document to refer to these actions as crimes. Aiming to protect children from sexual exploitation and sexual abuse, the Convention sets out some responsibilities to signatory States. Despite being one of the signatories of the Lanzarote Convention, the aforementioned acts are not considered a separate crime in Türkiye. This study seeks to make the issue visible and suggests providing measures to prevent the sexual exploitation of minors by taking the necessary legislative steps.

Viktoriia Hamaiunova is the authoress of the eighteenth essay ***Influence of Implicit and Visible Legal Cultures on Modernisation of Judicial Systems in European Countries.*** The functioning of the judicial system depends not only on the law in force, but also on its interpretation on a daily basis by both court officials and citizens, that is, the level of their legal culture. As In some national law systems of European states the general direction of visible and implicit culture coincides, the national deep level of legal values for the most part coincides with the adopted laws that are implicit and visible cultures are difficult to discern. The authoress points out that if the national deep level, which corresponds to the deep context of the culture and mentality of a given society, comes into conflict with the visible culture expressed in officially adopted laws and the official state ideology, two cultures are formed: visible culture and implicit culture. Unable to influence the decision of the government, people try to avoid direct conflict, however they follow their own rules developed by a narrower group of people, thereby strengthening the influence of implicit legal culture.

Jennel R. Cheng authored the nineteenth contribution ***The Philippines Readiness in Addressing Food Security by Minimizing the impact of Climate Change.*** The UN has declared that Climate Change is a long-term shift in weather pattern, that could be natural such as variations in the solar cycles. The 1987 Philippine Constitution states that The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. In 2020, the Paris Agreement, which is the pinnacle of international law on climate change, orchestrated global climate action over the coming decades. Countries agreed to limit global warming to well below 2ºC above preindustrial times, closer to 1.5ºC. In 2023, at the World Economic Forum, Climate Change has been one of the biggest economic factors playing a vital role globally. The author's view is that this means that aside from the global terrorist threat, Climate Change is now a global threat that raises a global concern that needs an urgent attention. As the author explains that in the Metaphysics perspective, this year will bring out more issues on climate change affecting the productivity of farmers specially in Q3 and Q4. Her concludes by stating that climate change affects the productivity of the people, as well as the food production which is a matter of concern for every world leader.

The author of the twentieth esssay ***The Imposition of Chemical Castration as a Sentencing Option for Sexual Offenders in South Africa: A Human Rights Perspective*** is **Dane Ally**. The author points out that *there has been a significant increase in sexual violence offences perpetrated by recidivist males in the Republic of South Africa. As a result, the social transformation sub-committee of the ruling political party, the African National Congress (ANC) recently repeated the call that chemical castration (also known as Anti-libidinal interventions) be introduced as a sentencing option for male sexual offenders. This response to the mentioned increase has been frowned upon by a male support group, known as the Million Men March Organisation (Million Men), situated in Polokwane, South Africa. They assert that such a sentencing option would fly in the face of the founding values of the Constitution of the Republic of South Africa, 1997 which seeks to enhance freedom, human dignity, and equality. In my discussion I shall adhere to a two-phased analysis, as described in a case of the Supreme Court to determine whether the proposed sentencing option would survive constitutional muster. During the first phase of the analysis, the author considers whether the proposed sentencing option constitutes a violation of the provisions of the Constitution. He argues that the suggested sentencing option does violate fundamental human rights protected in the Constitution. During the second phase of the assessment, he subjects the suggested sentencing option to a limitations clause analysis, to determine whether the proposed sentencing option would be deemed a 'reasonable and justifiable' limitation of the identified fundamental rights.*

The twenty first contribution ***The Full Enforcement of Socio-Economic Rights in Africa: a Dream or a Reality?*** has been authored by **Katlego Arnold Mashego**. Despite the adoption of the African Charter on Human and Peoples' Rights on 27 June 1981 in Nairobi, Kenya, to date, Africans' socio-economic rights are not fully or at all enforced. The author argues that Africa must take a new approach, a strategic one towards economic development in Africa and consequently the enforcement of socio-economic rights. He submits that several strategic approaches, such as development of new laws on the natural resources,

producing quality products and services, image related strategies which involve great marketing of Africa, its products, and services. He argues that there is a link between economic development and the enforcement of socio-economic rights. His view is that intra-African trade will enhance sustainable development and economic growth. He is of opinion that African countries should focus more on intra-African trade, which will accelerate sustainable economic development and consequently the enforcement of socio-economic rights. In return it will reduce poverty and better the lives of millions of Africans who are in dire need of socio-economic rights to be enforced due to the living conditions they are in.

An Analysis of South Africa's Constitutional and UNCRC-imposed Obligations to Achieve Children's Socio-Economic Rights: A Critique, authored by **Tshilidzi Knowles Khangala** is the twenty second contribution. As stated in her essay, in the Republic of South Africa, a significant proportion of the youth population experiences the distressing circumstance of living in poverty. The prevalence of HIV infection and the consequential mortality rates due to AIDS among caretakers have a detrimental effect on the well-being of children. *The* United Nations Convention on the Rights of the Child (UNCRC) encompasses social, economic, and cultural rights under its provisions. Following the ratification of the UNCRC in June 1995, South Africa is legally obligated to implement the articles pertaining to the rights of children. The contributor assesses the extent to which South Africa has adhered to its constitutional and UNCRC-mandated responsibilities and commitments in order to achieve the socioeconomic rights of children.

Yunbo Zhang is the author of the twenty third contribution ***The Study on the Effectiveness of Arbitration Clauses in International Commercial Arbitration – From the Perspective of Contract Non-Formation.*** In addition to the classical jurisprudence of private international law, common law, and international commercial arbitration, the study is based also on the customs of international commercial transactions, the contents of the cases, and conducts legal doctrinal analysis, comparative analysis, as well as case analysis. From different perspectives, these legal norms and issues reflect that the arbitration clause has considerable independence and can typically be established independently of the main contract. The author points out that the determination of the validity of the arbitration clause has its logic of the decision, and it should also apply the process of conclusion of the contract, which includes the conditions of the voluntary agreement of the parties, the process of invitation and negotiation, and the true intention of the parties.

The twenty fourth and final essay in this volume, ***The Ethics of Law: How US/UK Intervention in Iraq and Russia's Invasion of Ukraine Breach the Principle of Virtue and International Law***, has been authored, too, by **Emmanuel K Nartey.** The author states that the war in Iraq and the recent war in Ukraine symbolise the importance of resolving the crisis of international law and laws of war, and the problematic aspect of these wars stems from the misconception of aggression or the composition of aggression. The author’s view is that this falsity consists solely of the concept of aggression under international law, which has been abused, fragmented and confused. Therefore, this false idea of the concept of aggression under international law contributes to the development of modern conflicts. In an attempt to rationalise some of the fundamental failures in

international law and the United Nations Security Council (UNSC), the author seeks to examine whether the inclusion of ethics in the mechanism by which international law is implemented will be relatively useful. It explores whether ethical code can be incorporated into the mechanism by which international law is implemented, and if so, how can ethics enhance the existing rules and states' conduct. The essay is divided into four sections. The first tries to explain the fundamental principles of ethics, while the second views international law in the conception of subject matter application and practice. The third section looks at Russia's invasion of Ukraine and the UK/US invasion of Iraq, and the final one presents a philosophical conclusion on the subject matter.

Many of the debates analysed are ongoing and the policy, ideas and interpretation brought up in the essays will undoubtedly contribute to future debates. I hope the reader will find the collection of essays stimulating and insightful reading not only for those who are interested in a particular issue discussed but also to acquaint themselves with other current issues.

The views expressed in the essays in this volume are those of the authors and do not represent nor are they intended to represent the views of any other individual or body.