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EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



This Project is funded
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The Legal Language of the European Union

The Jurist and the Legal Language over time

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This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

The world of law: nineteenth century

The Law, the Language, the Material fact



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The world of law: nineteenth century

Legal translation was perceived as an implicit activity, having no dignity of existence as a discipline



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The world of law: the nineteenth century

The relationship between the law and the language
was studied and analysed by jurists from *inside*



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The world of law: the twentieth century

Material fact

Law

Material fact

Law

Language

Language

Law

Material fact

Law

LAW

Language



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The world of law: the twentieth century

Legal translation was not longer considered a simple way of expressing foreign law, but a method, even if not a scientific discipline yet



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The world of law: the twentieth century

Jurists started to observe the relationship between law and language from *outside*



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Law and Language

Legal translation: a scientific discipline

Law and Language: a new field of research



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Law and Language

Canada



The European Union



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The Multilingualism

Article 342

Treaty on the Functioning of the European Union (TFEU)

(ex Article 290 TEC)

The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.



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Regulation N° 1, 15 April 1958

Article 1

The official languages and the working languages of the institutions of the Community shall be Dutch, French, German and Italian...

...Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish...



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Art. 4 Regulation 1/1958

Regulations and other documents of general application
shall be drafted in all the official **languages**.



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Neologisms: ordinary (natural) language

Globalization

Globalisierung

Globalizzazione

globalización

globalização

Глобализация

globalizatsiya

mondialisation



Neologisms: legal (technical) language

владение

Possesso

Besitz

Possession

Bezit

Possession



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Neologisms and the EU legal language

Directives and Regulations introduce **new norms** and **new concepts** in the Member States and give
rise to a
new **legal language** of the **European Union**.



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EU Law and Language

Literature (legal and interdisciplinary)

Symposium

Congress

Training

University courses



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EU Law and Language

High level of scientific analysis (a) and a relevant impact on legal practice (b)

- A) For instance: semiotics analysis
- B) The role of national jurists



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a) Semiotics (interdisciplinarity)

In this fields of research, EU law is observed from the semiotic point of view as a *signs system* and a *horizontal meta-juridical law*



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b) The role of national jurists (institutional)

From an institutional point of view, the **European legal language** evolves on the basis of the interpretation of national judges and application by notaries



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An example

The European Certificate of Succession (ECS)

Art. 62 ff. of the Succession Regulation 650/12



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Art. 69 Succession regulation

*Article 69, 5. **Effects of the Certificate.*** The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State....

*Article 69, 5. **Effets du certificat.*** Le certificat constitue un document valable pour l'inscription d'un bien successoral dans le registre pertinent d'un État membre....

*Artículo 69, 5. **Efectos del certificado*** El certificado será un título válido para la inscripción de la adquisición hereditaria en el registro competente de un Estado miembro....

Artikel 69, 5. Onverminderd artikel 1, lid 2, onder k) en l), is de erfrechtverklaring een geldig document voor de inschrijving van goederen uit de nalatenschap in het desbetreffende register in een lidstaat.



Art. 69 Succession regulation

Hungary

A bizonyítvány joghatásai

...

A bizonyítvány olyan okirat, amely érvényes jogcímet képez – az 1. cikk (2) bekezdése k) és l) pontjának sérelme nélkül – a hagyaték tárgyát képező vagyontárgynak valamely tagállam megfelelő nyilvántartásába való bejegyzéséhez



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Art. 69 Succession regulation

Bulgaria

РЕГЛАМЕНТ (ЕС) № 650/2012 НА ЕВРОПЕЙСКИЯ ПАРЛАМЕНТ И
НА СЪВЕТА

Член 69

Правни последици от удостоверението

...

5. Удостоверението представлява действителен документ за
вписването на наследственото имущество в съответния
регистър на дадена държава членка, без да се засяга член 1,
параграф 2, букви к) и л).



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Art. 69 Succession regulation

Italian

Articolo 69

Effetti del certificato

Il certificato costituisce **titolo idoneo** (**suitable title**) per l'iscrizione di beni ereditari nel pertinente registro di uno Stato membro



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ECS in Northern Italy

The Certificate shall constitute a **valid document** for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).

... Italy.....is the ECS a..... **valid document**or a..... **suitable title?**



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ECS in Northern Italy

The Italian system of land registry:

The **tabular system** (former Austrian provinces)

The **registry system** (the rest of Italy)



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The Italian tabular system

The “Italian succession certificate”
and the “European succession certificate”



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The Italian tabular system

- art. 21 of the decree 499/1929 regulating the tabular system, providing that “A person cannot be qualified as heir if he/she is not in possession of a succession certificated enacted according to this decree (that’s to say: the tabular certificate of succession).
- law 161/2014 provided that even after the enactment of the European Certificate of Succession, in territories where the Italian tabular system is in force, the provisions on the (tabular) succession certificate remain valid”



The Italian tabular system

Tabular judges of Trieste e di Rovereto (Trento), enacting tabular decrees GN nn. 4537/2019 e 2209/2019.

Deciding on the relationship between the European and the Italian certificate of succession



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The Italian tabular decrees

A) Court of Justice, decision 21.06.2018, C-20/17 –
«Oberle»

«The EU Succession Regulation creates a single regime
and therefore the situation in which there are two
certificates certifying information about the same object
should be avoided»

B) interpretation in conformity with EU law



The Italian tabular system

The European certificate of succession **has the same function** of the Italian certificate of succession and it is compatible with the tabular system of Northern Italy

Art. 69 Succession Certificate: «**suitable title**»



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The national jurists

Jurists

notaries and judges in particular

can give an
important

CONTRIBUTION

in **interpreting, applying** but also

consolidating EU concepts

Neologisms



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EU Law and Language: EuLawInEnglish

Training focuses on: (a) legal knowledge of the specific and recent EU legal instruments, (b) linguistic skills and (c) legal terminology.

in other words..... on (a) the legal content of the EU regulations, on (b) English, and on (c) the EU legal language.



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Comparative law terminology

Model/Circulation of models

Original model; imposed model: imitated model

Formant

Legislative formant; case law formant: doctrinal formant (scholarly opinion)

Homologation

Rodolfo Sacco, *Legal Formants: A Dynamic Approach to Comparative Law*, in *The American Journal of Comparative Law*, Vol. 39, No. 1 (Winter, 1991), pp. 1-34.



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«Model»



Institutes
Concepts
Case law decisions
Doctrinal opinions
..entire legal systems



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«Model»

Original models:

«Trust», «Equity» (England)
«Rechtsgeschäft» (Germany)

Circulated models:

«Trust» in the USA, Canada (Trust/Fiducie)
«Rechtsgeschäft» in Italy (negoziio giuridico)



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Composition of the legal systems: the **original** models



Legal system are not
composed only by
original (local)
models



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Composition of the legal systems: the **circulated** models



Nowadays legal
systems
are the outcome
of a huge
**circulation of foreign
models** too



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Circulation of models



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Legal transplants



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A serious game

Player A and Player B are seated back to back to each other and have both in front of them a desk with a series of wooden pieces of different shapes and colors.

Player C is placed between players A and B.

None of the three Players has a chance to see what the other two are doing.

Player A creates a construction with the wooden pieces at his/her disposal.

While he/she builds it, for every time he/she moves a piece he communicates in English his/her move to C.

Player C transfers the same information in English to B, who does the same thing with his/her wooden pieces.

Player B must create an "identical" construction with his/her own pieces.

Once the constructions have been completed the Players compare the two constructions.



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A serious game

Two series of wooden pieces



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A serious game

In the end the two constructions are never identical



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A serious game

Some pieces had the same **SHAPE** but different **COLORS**



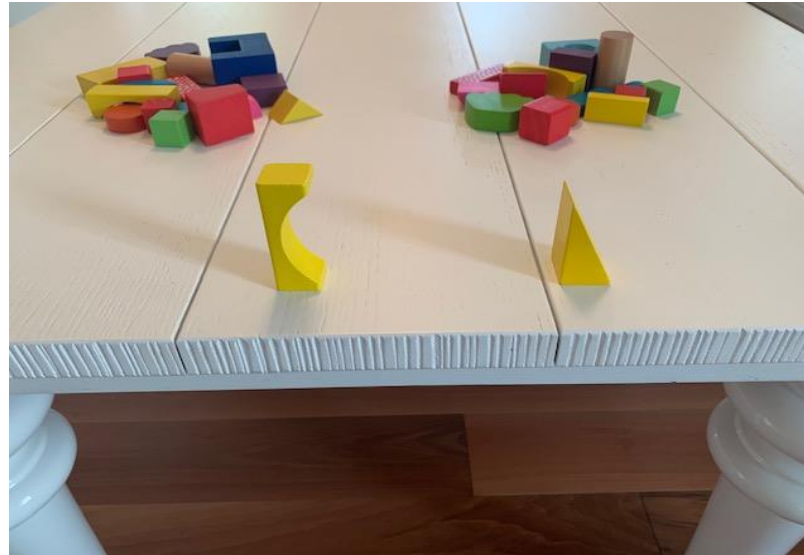
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A serious game

Some pieces had the same **COLOR** but different **SHAPES**



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A serious game

Some pieces had different **SHAPES** and **COLORS**



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Legal transplants

The **COLOR** represents the language in which a **legal concept (model)** is expressed.

The **SHAPE** represents how a **legal concept (model)** is composed.



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Example

The language

Divorce (USA, state level) and **Divorzio (Divorce)** (Italy, before the reform Law 2015, n. 55).

How the legal concept is composed

Divorce (USA, state level) and **Marriage dissolution** (Italy, after the reform: Law 2015, n. 55).



The European Union



The European Union has
gave rise to a huge
phenomenon of
models circulation



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The European Union

Regulations (UE) no. 650/12 on cross-border successions, on matrimonial property regimes (1103/16) and on property consequences of registered partnerships (1104/16)

New models

E.g. «Succession», «Heir», «Habitual residence».....



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Homologation

The homologation technique is useful in order to verify whether two legal concepts (or institutes) from different legal systems are similar or not, and to measure the similarities, that is to say, the legal effects that are concretely produced in the two legal systems under analysis.



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Homologation

USUFRUCT IN ITALY (Usufrutto)	USUFRUCT IN THE NETHERLANDS (Vruchtgebruik)		
<p>The usufructuary has the right to enjoy an object but must preserve its economic destination.</p> <p>Art. 981 C.C.</p> <p>The usufructuary must return the things that are the object of his/her right at the end of the usufruct (...)</p> <p>Art. 1001 co. 1 C.C.</p>	<p>The right of usufruct provides the right to use things that belong to another person and enjoy the fruits thereof.</p> <p>Art 3:201 BW</p> <p>A usufructuary can use and use up (consume) the things under the usufruct in accordance with the rules made upon the creation of the usufruct, or where such rules are lacking, in accordance with the nature of the things and the local practice in respect to the use and using up.</p> <p>Art 3:207(1) BW</p>		



Homologation and the adaptation principle

Homologation is a useful technique at the national jurist's disposal to take the delicate decisions deriving from the application of the “adaptation of right in rem principle” provided for in *reg. 650/12 art. 31 (and reg. 2016/1103; 2016/1104 art. 29)*.



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Homologation and the adaptation principle

According to this principle, where a person invokes a right *in rem* he is entitled to under the law applicable to the succession/matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* under consideration, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by that specific right *in rem* and the effects attached to it.



The legal formants

Formants are groups of norms sharing the same characteristics in providing solutions to a specific legal problem (or legal matter, question of law).

The solution to a question of law can be found in the legislation (legislative formant), in case law (judicial formant) and in the work of scholars (doctrinal formant), these groups of rules are the three main *formants* and might be dissociated....



The legal formants

Opinion of the Advocate general M. Campos Sánchez-Bordona, dated 26th March 2020, making explicit reference to *comparison* as a way to understand the will of the deceased, according to regulation 650/12.



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The legal formants

Recital 39 of the Succession regulation establishes that, in a will, “A choice of law could be regarded as being demonstrated by a disposition of property upon death where, for instance, the deceased had referred in his disposition to specific provisions of the law of the State of his nationality, or where he had otherwise mentioned that law”.



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The legal formants

The *formants* analysis is the tool that will allow the judge to understand whether the law or the specific provisions that the deceased mentioned in his will are typical only of the State whose decision of law is under discussion, or if they are also present in the judicial system where the deceased had his habitual residence.



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Training and cooperation!

United in diversity



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