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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
by the European Union's
Justice Programme 2014-2020

Learning by playing.

A serious game in comparative law and legal translation

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Fondazione
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del Notariato

Partners



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Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

Comparative law

Science

Knowledge

Methodology



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Comparative law

Comparative law as a science : 20° century

«Society of Comparative Law» (London)

«Société de Legislation Comparée» (Paris),

«International Association of Comparative Law» (Paris)

Comparative law was introduced in Italy in the 20° Century by prof. Rodolfo Sacco (University of Turin, Accademia Nazionale dei Lincei)



Comparative law

Knowledge = Data = Legal Rules (norms)



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Comparative law

Methodology

Operational Rules

Homologation



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Comparative law

Comparison: similarities and differences among legal rules (institutes) of different legal systems



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Comparative law: the (legal) language

Donazione (Italian)

Donation (English)

Donation (French)



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Comparative law: the language

La donazione (art. 769 Italian civil code)

«A donation is a **contract** through which a party enriches another party, by transfer a right or by taking an obligation, for generosity reasons»



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Comparative law: the language

The **donation** is qualified as a **contract** in **France** (as well as in other civil law systems as Germany §516 – 534 BGB)

In the case of **England and Scotland** the **donation** has the nature of unilateral act and not of a contract



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Comparative law: the content

Legitimate interest (Italy)

Half of a Right (Finland)



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Comparative law.....

...shows how a system really works.....

...beyond definitions and the legal language.

Operational rules



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The rules of the 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 (approximately 20) 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/her 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 buildings.



How is a legal institute composed

The legal language

Donazione/donation/donation

The content

In Italy, France, Germany ...the donation is a contract, while in England and Scotland is an unilateral act



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Comparison

The legal language

Donazione/donation/donation

Color of the blocks



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Comparison

The content

Contract v. unilateral act

Form of the blocks



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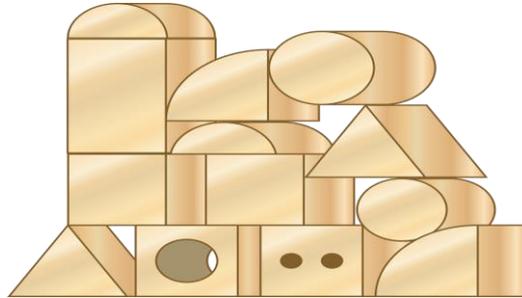
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Comparison

If you went for the colors of the blocksyou went for the
legal language

The legal language may coincide, but not the content of the institutes

Example: donazione/donation/donation



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Comparison

If you went for the **form of the blocks.....**you went for
the content

The **content** is the same, but the **legal language** is different

Example: **Legitimate interest (Italy)** **Half of a Right (Finland)**



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Comparison

Even when the **content** (form of the blocks) and the **legal language** (color of the blocks) coincide...the **legal effects** may not be the same!

Usufruct

in Italy (usufrutto) and in **the Netherlands** (Vruchtgebruik)



The methodology of comparative law: 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 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 of to the use and using up.</p> <p>art 3:207(1) BW</p> |



Homologation

This technique is useful in order to verify whether two institutes of different legal systems are similar or not, and to measure the eventual similarities.

Similarities and differences = **legal effects** that are concretely produced in the two legal systems
(**operational rules**)



Homologation

In order to do that, the legal institute under analysis has to be reduced to **more elementary concepts.**



Homologation

Italy

Use up (to consume)

“quasi usufrutto”

real right: NO

The Netherlands

Use up (to consume)

“Vruchtgebruik”

real right: YES



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Homologation

Besitz

Germany and Switzerland:

- movable property
- *de facto* power over the good

Italy: detention (detenzione)

Austria

- movable property
- *de facto* power over the good
- animus domini.



Homologation in EU IP law

Adaptation of Rights *in rem*

Where a person invokes a right *in rem* to which he is entitled 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* in question, 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 the specific right *in rem* and **the effects** attached to it.



Homologation in EU IP law

The jurist need a **standard** to measure differences and correspondences to the *right in rem* that he considers the closest equivalent under the law of the MS in which the right is invoked.

According to comparative law this standard, this has to be done by uncovering the *operational rule*, that's to say the final legal effect that an institute is producing in a legal system regardless the formal definition.



Homologation in EU IP law

Measure

comparing the legal effects

operational rules

Standard

the most relevant legal effect (operational rules) related to the “aims and the interests pursued by the specific right *in rem*” in the specific, **factual situation** (art. 31)



Homologation in EU IP law

Adaptation of rights in rem *reg. 650/12 (and reg. 2016/1103; 2016/1104)*.

The international private law scholars commenting the regulation suggest to rely on the **methodology of comparative law** in order to verify the applicability of the adaptation principle.



The methodology of comparative law in IP Law

Multilingualism

Art. 342 of the Treaty on the Functioning of the European Union (TFEU).

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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The methodology of comparative law in IP Law

Regulation n. 1 dated 15 April 1958 establishing the European Economic Community's linguistic system, O.J. n. 17 6 October 1958.

Article 1

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.



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The methodology of comparative law in IP Law

Regulation n. 1 dated 15 April 1958 establishing the European Economic Community's linguistic system, O.J. n. 17 6 October 1958.

Article 4

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



Language discrepancies in Reg. 650/12

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



Language discrepancies in Reg. 650/12

Bulgary

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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Language discrepancies in Reg. 650/12

69. 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



Language discrepancies in Reg. 650/12

Italian

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



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Language discrepancies in Reg. 650/12

Article 35.

Public policy (*ordre public*)

The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 35

Ordre public

L'application d'une disposition de la loi d'un État désignée par le présent règlement ne peut être écartée que si cette application est manifestement incompatible avec l'ordre public du for.



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Language discrepancies in Reg. 650/12

Artículo 35

Orden público

Solo podrá excluirse la aplicación de una disposición de la ley de cualquier Estado designada por el presente Reglamento si esa aplicación es manifiestamente incompatible con el orden público del Estado miembro del foro.



Language discrepancies in Reg. 650/12

Член 35 (*Bulgary*)

Обществен ред (**ordre public**)

Прилагането на разпоредба на правото на държава, определено като приложимо от настоящия регламент, може да бъде отказано само ако това прилагане е явно несъвместимо с обществения ред (*ordre public*) на държавата на сезирания правораздавателен орган.

35. cikk (*Hungary*)

Közrend („ordre public”)

Valamely e rendelet által meghatározott állam jogának valamely rendelkezésének alkalmazása csak akkor tagadható meg, ha az alkalmazás nyilvánvalóan összeegyeztethetetlen a fórum közrendjével („ordre public”).



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Language discrepancies in Reg. 650/12

Articolo 35

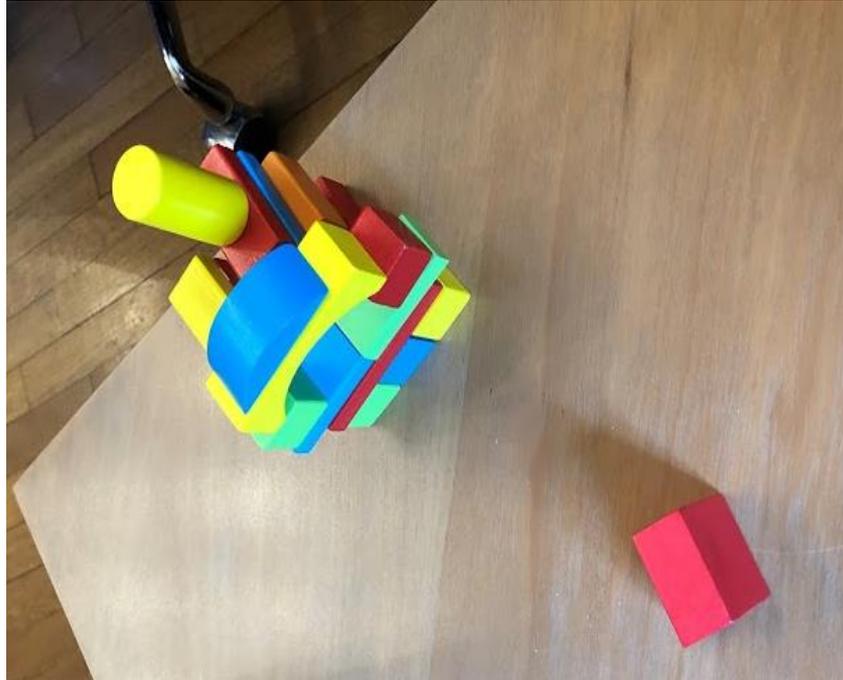
Ordine pubblico

L'applicazione di una disposizione della legge di uno Stato designata dal presente regolamento può essere esclusa solo qualora tale applicazione risulti manifestamente incompatibile con *l'ordine pubblico del foro dell'autorità giurisdizionale o di altra autorità competente che si occupa della successione.*

public policy (*ordre public*) of the forum of the juridical authority or of an other competent authority in charge of the succession



Thank you for playing with us!



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