The World Society of Mixed Jurisdiction Jurists: Fifth World Congress 2023

Mixity in Private Law and/or Public Law (June 14 -16 2023)

Sponsored by:

The Faculty of Laws of the University of Malta,
The Eason Weinmann Center for International and Comparative Law, Tulane University,
& Ganado Advocates

	Wednesday 14th of June
5:00 pm	Registration: *University of Malta, Valletta Campus Level 2*
6:00 pm	Welcome by the WSMJJ President, VERNON VALENTINE PALMER - Location: *Aula Prima*
6:15 pm	Keynote speech: AURELIA COLOMBI CIACCHI: **Fundamental Rights Horizontality in Europe: New Perspectives on Legal Mixity** Location: *Aula Prima*
7:15 pm	Drinks Reception - Compliments of Ganado Advocates - Location: *171 Old Bakery Street, Valletta*
8:00 pm	Evening free

	Thursday 15th of June	
9:00	Welcome by the Dean of the Faculty of Laws, Dr IVAN MIFSUD. Location: *Aula Prima*	
9:05 - 10:20	Parallel sessions: **Crossing the Public/Private Law Divide in Mixed Jurisdictions.** Moderator: Prof. LIONEL SMITH Location: *Meeting room 103*	Parallel sessions: **Legal Transplants in Criminal and Procedural Law.** Moderator: Prof. SALLY RICHARDSON Location: *Meeting room 102*
	JACQUES DU PLESSIS: Private Law and the State : A South African Perspective	YASUNORI KASAI: Mixed Nature of the Criminal Justice System in Japan
	CHRISTA RAUTENBACH: Traditional Authorities in South Africa: Exploring the Private-Public Law Enigma	VALENTINA COLCELLI: Towards a Comparative Analysis of the Regulatory Framework for European Health Data Research
	IBTISAM SADEGH and DAVID EDWARD ZAMMIT: Managing Mixity in Marriage Law and Society: Comparing Ceuta and Malta	PATRICK GALEA: The Mixed Origins and Character of the Maltese Civil Process
10:20 to 10:40	Coffee Break	
10:40 to 12:10	Parallel sessions: **From Mixity to Hybridization: Complex Mixtures in Private Law**. Moderator : Prof. JACQUES DU PLESSIS Location: *Meeting room 102*	Parallel sessions: **Mixity in Public Law** Moderator : Prof. AGUSTIN PARISE Location: *Meeting room 103*
	AMIHAI RADZYNER: "The American Inheritance":	KEVIN AQUILINA: Mixity in Maltese Public Law: The

	The American Influence on the Israeli Succession Law	Constitution of Malta as a Microcosm of the Maltese Mixed Legal System
	RONALD J. SCALISE Jr: Holographic wills : A Forgotten Dividing Line between Civil and Common and What it Means for Mixed Jurisdictions	IGNAZIO CASTELLUCCI : The Enigmatic Creativity of Mixed Jurisdictions Jurists
	KURT XERRI: The Effect of Fiduciary Obligations on the Maltese Civil Law Contract of Mandate	DELANO COLE VAN DER LINDE: The Complex Hybridity of South African Criminal Law
	MARK SAMMUT SASSI: Common Law Contributions To the Maltese Rendition of the French Penal Code	HENRY ORDOWER: Tax as Hybrid Law: Borrowing and Convergences
12:10 to 13:30	Luncheon - Compliments of THE EASON WEINMANN CENTER FOR INTERNATIONAL AND COMPARATIVE LAW (Tulane University)	
13:30 to 14:30	Parallel sessions: **The Erosion of Differences in Mixed Jurisdictions.** Moderator: Prof. SHAEL HERMAN Location: *Meeting room 102*	Parallel sessions: **Judges as Agents of Diffusion** Moderator: Prof. VERNON VALENTINE PALMER Location: *Meeting room 103*
	GIANLUCA PAROLIN: Postcolonial Quandary: Revisiting Malta's Mixity through Linguistic Practices	NOÉMIE ETCHENAGUCIA: The Courtroom: Theater of a Mixture of Methods
	SALLY BROWN RICHARDSON: Are All Jurisdictions Community? How Mixing Marital Property Rules Has Led Jurisdictions To Have Community Property	ARIE REICH: European and US Influence of the Israeli Judiciary: Ambivalence and/or Coherence?
14:30 to 15:15	Plenary Session: DAVID EDWARD ZAMMIT and MAX GANADO: **The Evolving Mixity of Maltese Private Law: From Commercial Law to Human Rights** Location: *Aula Prima*	

15:15 to 15:45	Coffee break	
15:45 pm to 17:05	Parallel sessions: **Mixity as a Tool of Post-Colonial Governance.** Moderator: Prof. DAVID EDWARD ZAMMIT Location: *Meeting room 103*	Parallel sessions: **Dialogues Made Possible through Mixity** Moderator: Prof. ADAM FEIBELMAN Location: *Meeting room 102*
	JEANISE DALLI: Codified Legislation Based on a Common Law Approach: The Case of FGM Regulation	ROSALIE JUKIER and DAVID HOWES: Judicial Dialogues in Mixed Jurisdiction Courts: How Civilian and Common Law Judges Converse on Canada's Supreme Court
	QUAMAR MISHIRQI - ASSAD and ALEXANDRE (SANDY) KEDAR: A Legal-Geographical Examination of the Transformation of the Susiya-Area in the Occupied Palestinian Territories 1967 to 1998	AGUSTIN PARISE: *Mixité sans frontières.* The 1950 Dissemination of Louisiana Public and Private Law Publications in French Legal Institutions
	ENYINNA S. NWAUCHE: The Future of African Indigenous Law	DAVID GILLES: How to Build Historical Social Acceptation Under the British Rule of Law in Old French Colonies : Quebec and Mauritius Under Civil and Commercial Law (1760-1810)
17:05	Evening free	

	Friday 16th of June	
9:00	Welcome by Professor Ivan Sammut, Deputy Dean of the Faculty of Laws, Location: *Aula Prima*	
9:05 to 10:25	Parallel sessions: **Mixity and EU Law** Moderator: Prof. MARKUS PUDER Location: *Meeting room 102*	Parallel sessions: **Tort Law as a Vehicle for the Hybridization of Private Law** Moderator: Prof. VERNON VALENTINE PALMER Location: *Meeting room 103*
	TIZIANA FILLETI: Is the Mixity of Maltese Corporate Law About to be Compromised?	TAMAR GIDRON & IHSAN KENAAN: Proportionality in Israeli Law of Torts - a Mixture of Public Law Values and Private Law Liability
	ANA MERCEDES LOPEZ RODRIGUEZ: The Transposition of the EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers: Lessons for Mixed Jurisdictions.	EMI MATSUMOTO: Causation in Japanese Tort Law from the Perspective of Mixed Legal Systems
	IVAN SAMMUT: Is European Union Law a Typical Mixed Legal System, or Is It a Civil Law System With Common Law Influence?	JULIETTE GALEA: Applying Human Rights Horizontally in Malta's Tort System
10:25 to 10:55	Coffee break	
10:55 to 12:15	Parallel sessions: **The Creativity of Jurists in Mixed Jurisdictions** Moderator: Prof. LIONEL SMITH Location: *Meeting room 103*	Parallel sessions: **Newly Recognized Mixed Jurisdictions** Moderator: Prof. AGUSTIN PARISE Location: *Meeting room 102*

	DAVID CABRELLI and LAURA MACGREGOR: Contractual Good Faith in Scots Law: The Way Forward?	ADAM FEIBELMAN: Goa: An Overlooked Mixed Jurisdiction
	MARKUS G. PUDER: The Voice of Mixed Jurisdictions in the Comparative Law Discourse	SHAEL HERMAN: France's Pluralistic Experiment with Jewish Communities and Their Laws
	MARY MUSCAT: The concept of the matrimonial "consortium totius vitae" in the Catholic Canon Code and Maltese marriage legislation	JULIANA LATIFI: Albanian Civil Code: A Mixture Between Tradition and Civil Codes - Models of the Civil Law Family
12:15 to 13:45	Lunch break	
13:45 to 14:45	Keynote speech: The Honorable IAN FORRESTER KC: **From Six to Twenty Eight: Building Consensus Between Different Traditions** Location: *Aula Prima*	
14:45 to 15:45	**Business Meeting: The World Society of Mixed Jurisdiction Jurists**	
15:45	Afternoon free	
20:00	**Gala Dinner [at Ta Nenu Restaurant] in Valletta**	
	Saturday 17th June	
9:00 to 12:00	Optional Walking Tour of Vittoriosa (for those registered)	

Wednesday 14th of June

KEYNOTE SPEECH:

Fundamental Rights Horizontality in Europe: New Perspectives on Legal Mixity

Aurelia Colombi Ciacchi

This presentation sketches and compares different models of horizontal application of fundamental rights in adjudicating private litigations. It proposes a taxonomy of four groups of jurisdictions: (1) new continental European democracies whose Parliaments had introduced authoritarian regimes in the 20th century, such as Germany, Italy, Portugal, Spain, and Eastern European EU Member States; (2) old continental European democracies such as France and the Benelux countries; (3) old democracies in the UK and Scandinavia that never adopted continental constitutional models; and (4) mixed models: Malta, Cyprus, and Ireland.

The first group of legal systems is characterized by a relative distrust in Parliament, a relatively strong judicial activism, and the primacy of national constitutional rights. The second group is characterized by a relative trust in Parliament, a moderate judicial activism, and the primacy of international human rights. The third group is characterized by judicial restraint and the difficulty to internalize international human rights law. The fourth group is characterized by mixed models based on a written Constitution, but with several traditional common law features.

The presentation is concluded by the observation of three dimensions of mixity in fundamental rights horiziontality in Europe. The first dimension concerns mixity between different areas of law. Fundamental rights horizontality is a cross-cutting topic, mixing constitutional law and human rights law with private law. The second dimension of mixity relates to the coexistence of common law elements and civil law elements within one and the same jurisdiction, not only in classic mixed jurisdictions such as Malta, but also in civil law countries such as Germany, or in common law jurisdictions such as England & Wales. The third dimension embraces the mixity of different European jurisdictions in their multi-level interactions, as evidenced for example in the CJEU case law on fundamental rights horizontality.

Aurelia Colombi Ciacchi is a Professor of Law and Governance at the University of Groningen, Faculty of Law, since 2010. Previously she was a senior researcher and senior lecturer at the University of Bremen in Germany and a Marie Curie Fellow at the Institute of European and Comparative Law at the University of Oxford. She authored and (co-)edited several publications in European and comparative law, including books published by Oxford University Press and Cambridge University Press. Since 2014 she is the Editor-in-Chief of the European Journal of Comparative Law and Governance (EJCL), which is a Web of Science journal published by Brill. Since November 2019 she is the academic director of the Groningen Law Faculty's centre of expertise "Rethinking Public Interests in Private Relationships" (REPP), funded by the Law Sector Plan of the Dutch Government.

Thursday 15th of June

PARALLEL SESSION:
Crossing the Public/Private Law Divide in Mixed Jurisdictions

Private Law and the State: A South African Perspective

Jacques Du Plessis

South African private law displays some unusual features that concern its relationship with public law and the state. Many private-law principles are derived from the civilian tradition, but are uncodified and are applied and developed by the judicial arm of the state in a precedent-based system that operates in a manner more characteristic of the common law tradition, where the private law/public law division is also less pronounced. Furthermore, private law operates within a constitutional dispensation that may require the courts to give effect to rights and values which extend beyond those traditionally associated with private law. This prompts a consideration of factors that influence the courts in establishing the limits of promoting these rights and values, and hence in delineating the contours of the separation of powers in the South African constitutional system. It is concluded that South African courts have generally proceeded with caution in applying these factors, but that this does not imply that they are necessarily failing to meet the demands of a so-called transformative constitution. It rather underlines the importance of engaging in incremental, creative doctrinal analysis, and of drawing to the fullest extent possible on its rich mixed heritage.

Jacques du Plessis is a Distinguished Professor in the Department of Private Law at the University of Stellenbosch. His fields of interest include the law of contract, the law of unjustified enrichment, legal history and comparative law. Prof du Plessis is Vice-President of the World Society of Mixed Jurisdiction Jurists, a member of the editorial boards of a number of international law journals, and an Associate Member of the International Academy of Comparative Law. He has been an Invited Fellow of the Institute for European Private Law in Maastricht, a Visiting Researcher at the Max Planck Institute for Foreign Private and Private International Law in Hamburg, and a Visiting Fellow at the Institute of European and Comparative Law in Oxford. In 2019 he held a Tijdschrift voor Privaatrecht Wisselleerstoel (Exchange Chair) at the Katholieke Universiteit Leuven in Belgium. Professor du Plessis was awarded the degrees of BComm (Law), LLB and LLM (cum laude) by the University of Stellenbosch, and a PhD in law by the University of Aberdeen in Scotland. He is admitted as an attorney of the High Court of South Africa and obtained a Certificate in Legal Practice (cum laude) from the University of Cape Town.

Traditional Authorities in South Africa: Exploring the Private-Public Law Enigma

Christa Rautenbach

South African law comprises common law, a fusion of 17th-century Roman-Dutch and English law, and customary law, the indigenous legal systems of traditional communities. While common law holds national applicability, customary law is limited, binding specific groups or geographic areas. The Mthembu v Letsela case (1997) affirms the constitutional

recognition of customary law as a distinct system, freely chosen by individuals. Customary law primarily governs family and property matters, aligning with private law's focus on interpersonal relations. However, the presence of traditional leadership and justice challenges the private-public law dichotomy. Public law regulates the state-individual relationship, and traditional authorities exhibit certain characteristics of public law, meeting statehood criteria. Nonetheless, their governance functions are confined to the communities they serve. This presentation aims to examine whether traditional authorities operate within the private or public law sphere and evaluate the relevance of this classification. By exploring this legal enigma, it seeks to deepen our understanding of South Africa's legal framework and its interaction with indigenous governance systems.

Christa Rautenbach is a legal scholar with over 30 years of experience in practice and theory, and is an Advocate of the High Court of South Africa. She is a Professor at the North-West University's Faculty of Law. Her areas of expertise include legal pluralism, customary law, mixed jurisdictions, cultural diversity, judicial comparativism, family law, and the law of succession. Christa has contributed to leading textbooks in South Africa, and serves on the editorial and advisory boards of various peer-reviewed law journals. She is also the editor-in-chief of the estemed Potchefstroom Electronic Law Journal. She is an an alumnus of the Alexander von Humboldt-Foundation and received the prestigious Alumni Award for Network Initiatives from the Alexander von Humboldt Foundation in 2021. For a list of a few of her publications, see https://orcid.org/my-orcid?orcid=0000-0001-6641-0123.

Managing Mixity in Marriage Law and Society: Comparing Ceuta and Malta

Ibtisam Sadegh and David Edward Zammit

In the public media both Malta and the Spanish enclave of Ceuta are portrayed as liminal gateways to "fortress Europe," where many encounter a fatal end of their migratory projects. In a context where marriage offers smoother access to European status and citizenship, marriage law occupies a critical gate-keeping role as a way to manage and control populations. Marriage law is transformed by its new role as an agent of migration control. Generally conceived as the quintessentially private law, it comes to be interpreted from a public law standpoint. Within classical mixed jurisdictions the resulting juxtaposition of private and public law generates intense cross-fertilisation and novel forms of legal hybridity. In this paper we first explore these dynamics through the lens of Maltese judgments by which certain religiously mixed transnational marriages have retrospectively been conceptualised as marriages of convenience. This has happened (often many years) after these marriages had been annulled, justifying the withdrawal of citizenship of the foreign spouse. Thus, these exclusionary strategies merge the Canonical grounds of annulment with the criteria for a marriage of convenience under migration law. In so doing, they also bring Common law inspired public law in tense proximity to the rules and doctrines of Continental/Canon law, leading to new forms of legal mixity which disturb the structural division within the Maltese Mixed Jurisdiction between Common law inspired Public law and Continentally derived Private law.

In Ceuta too, religiously-mixed transnational couples encounter various difficulties to marry and quickly learn that they are problematized as marriages of "convenience". This paper therefore investigates the vernacularization of 'marriages of convenience' both at the grassroots level as well as by the Ceutan Marriage Registrar when concluding interreligious transnational marriages. In this Ceutan setting it is through manipulating the gap between ostensibly inclusive marriage laws and their exclusionary application in practice that these mixed marriages are discouraged, via a form of normative pluralism in which both the local administration and the grassroots are complicit. This normative mixing generates an insistence on love as the antithesis to convenience; leading to a form of legal romanticism which functions as the interpretative key to Ceutan marriage law.

IBTISAM SADEGH is a lawyer and assistant lecturer in the Civil Law Department at the University of Malta. For her Doctor of laws (LL.D.) at the University of Malta, she conducted a comparative research between the Ecclesiastical Tribunals in Malta and Sharia Councils, Muslim Arbitration Tribunal and the Beth Din in England and Wales. She is currently concluding a PhD in Anthropology at the University of Amsterdam based on ethnographic research on the celebration and problematization of interfaith couples in the Spanish enclave of Ceuta

DAVID EDWARD ZAMMIT holds a Doctorate in Law from the University of Malta and a PhD in Legal Anthropology from the University of Malta. He is a full-time Senior Lecturer at the Faculty of Laws, Head of its Department of Civil Law and Founder-Director of the University of Malta Law Clinic. He has conducted anthropological field research in Maltese courts and legal offices and his research interests span the fields of legal anthropology, tort law and legal narratives.

PARALLEL SESSION:
Legal Transplants in Criminal and Procedural Law

Mixed Nature of the Criminal Justice System in Japan

Yasunori Kasai

There has been much less attention to the criminal law and procedure than the private law in the studies of mixed legal systems in general. This is true in the studies of countries of non-Christian tradition in particular such as Japan and China. This paper will, firstly, introduce to the audience the modern history of Japanese criminal justice since 1868 when Japan decided to choose the Western criminal system after the long tradition of the Chinese criminal system adopted and naturalised since the 8th century A.D. After the revised versions of the traditional Chinese criminal code were issued in 1870 and 1873, the first modern criminal codes of Japan, criminal law and criminal procedure, were promulgated in 1880 and came into force in 1882. Both codes were drafted by Professor G. E. Boissonade who came from Paris. Therefore both were inevitably influenced by French law.

Then, the code of criminal procedure was revised under the influence of German law in 1890 whereas the code of criminal law was several times revised and finally that of 1907 is still effective until now. The criminal procedure and the criminal justice system were wholly revised after the Second World War in 1947 under the heavy influence of American law

during the occupation. As is briefly stated, it will become visible that the modern Japanese criminal justice system has undergone the unique and affluent experience of the mixed legal system, namely traditional Chinese, then modern French, German and American law. It has been also based on the different Western legal tradition, namely continental substantive law and common law procedure. Furthermore, I can add one interesting recent phenomenon. Although Japan had a jury system from 1928 to 1943, after the Second World War, it had not been re-opened until recently despite of the American occupation and successive influence. In 2009 the new jury court system where six lay persons and three professional judges sit together has been introduced under the influence of the so-called democratization of justice. However, ironically the sentences issued by the new jury court have become increasingly heavier than those issued by the professional judges alone. Lastly I should like to mention another interesting point in the criminal justice system. Before 1945 there existed a kind of private prosecution (partie civile in French law). After 1945, under the common law influence, the new criminal procedure was introduced. But, the prosecution has been monopolized by the public prosecutors. One can argue that the monopoly is broken by a kind of grand jury system in Japan. But the conviction rate of the cases initiated by that grand jury is extremely low while the conviction rate of the cases initiated by the public prosecutors is nearly 100 percent.

YASUNORI KASAI read firstly law at Tokyo (LL. B.) and then studied classics at Bristol and obtained a Ph.D. there. His main research areas are Roman and Greek law, reception of Western law in Japan. Major works include (in Japanese): Translation and commentary of Demosthenes private speeches, Kyoto, 2019; Challenges of Classics, Tokyo, 2021; with John Baker, Introduction to Common Law, Tokyo, 2024.

Towards a Comparative Analysis of the Regulatory Framework for European Health Data Research

Valentina Colcelli

Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons concerning the processing of personal data and on the free movement of such data, (General Data Protection Regulation or GDPR), is a European Regulation that, by its very nature, is a source of law with universal applicability and is directly applicable in the Member States, provided that the Member States have not implemented and internally modified the Article 89 regarding exceptions in the area of scientific research. Articles 9(2)(J) and 89 will be examined in the paper's analysis of how the national legislatures of the 27 Member States and the United Kingdom implemented them, with particular attention on the member states based on mixed jurisdiction.

VALENTINA COLCELLI is Senior Researcher at National Research Council (Italy). Her main research interests focus on the interaction of domestic and European law in shaping rights and interests and market regulation. She also has a research interest in a general reflection on personal and non-personal data beyond the EU legal system, internal market regulation, Technology Transfer, legal and ethical issues in research and innovation activities, and adequate judicial protection of biodiversity in light of fundamental rights. She is a member of several projects funded by the EU and

long-lasting international research cooperation. She is Independent Ethics Advisors for European Cancer Imaging Initiative (EUCAIM project): one of the flagships of the Europe's Beating Cancer Plan (EBCP). She is co-chair of the Working Group "Regulatory, Ethics, and GDPR" for the Scientific Association "European, Middle East &African for Biopreservation and Biobanking" (ESBB)

The Mixed Origins and Character of the Maltese Civil Process

Patrick Galea

This paper attempts to assess and understand the current status and direction of Maltese Civil Procedure (MCP). The contribution will consider the historical roots and basis of the system, beginning principally with the *Statuta* and Codes of the Order of St John, in particular the Code of Grand Master Antonio Manoel de Vilhena and that of Emanuel de Rohan – the *Code de Rohan*. These Codes formed the basis of the Code of Civil Procedure enacted during the British period in 1854. However, this Code, drafted by Maltese hands, demonstrates extensive 'mixity' – the basic doctrines, such as interest, parties, jurisdiction, competence, pleas, *res judicata*, and *subuendum*, remain Civilian. On the other hand, the adversariality of the process, the method of conducting litigation remain English-inspired rules of procedure: in particular, the principles on evidence, as also those on burden of proof, are an adoption of the traditional Common Law Rules.

This mixed Code functioned well as originally designed till the 20th century. However, in the 1980s certain signs of fatigue became apparent; in particular, excessive formalism and concern about inordinate delays in proceedings became all too apparent and obvious. As it happened, a number of factors operated and came together simultaneously – the first, and the defining factor, was the influence the European Convention on Human Rights projected on the civil process – being, the notion of a fair trial within a reasonable time. The Courts, academics, lawyers and litigants became increasingly aware of these requirements, such as 'equality of arms', full access to the other party's evidence, and transparency of the Court's reasoning. The question of length of proceedings remained a core and sensitive issue. There were three White Papers and reforms to address these issues: these referred to Justice within a Reasonable Time, a Reform of the Law of Precautionary and Executive Warrants, and a Holistic Reform of the Justice Sector.

All these marked a shift in MCP – a clear focus on substance, shedding away formalism and formality. Moreover, the pivotal, all-pervasive influence and requirements of a fair hearing within the terms of Article 6 of the European Convention on Human Rights, became *the* defining factor. The necessity emerged for Court proceedings to be simplified, efficient, organized and generally accessible. Gone were the days when MCP was a procedural maze to the detriment of the uninformed litigant. Art 6 was a watershed moment. At the same time, the influence of the EU Regulations and Directives on MCP started to claw in – the jurisdictional limits in the past stopped right on our Island's shores, with an occasional stir being felt by the enforcement of a foreign judgment. From the Civil Procedure point of view, EU accession in 2004 expanded the potential recognition and enforcement of civil and family

judgments to right across the entire EU jurisdictional territory – far off, that is, from the narrow confines of the Maltese shores. The Malta Civil Code of Procedure, over the centuries, has adapted and responded to changes. However, it has remained resolutely and defiantly a 'mixed' Code of Civil Procedure.

PATRICK J GALEA is a practising Advocate, called to the Maltese Bar in 1982, and a senior lecturer in Maltese Civil Law and Procedure at the University of Malta. He has worked extensively in civil and commercial litigation, contract, corporate, financial services and advisory legal areas. He was awarded his PhD from the University of Edinburgh. His publications include Trusts, Property, Civil Procedure and Legal Professional Privilege. Contact: info@pjgjuris.com

PARALLEL SESSION:
From Mixity to Hybridization: Complex Mixtures in Private Law

"The American Inheritance": The American Influence on the Israeli Inheritance Law

Amihai Radzyner

The first original Israeli civil bill was the Inheritance Law, written by the Ministry of Justice in 1952. In the introduction to the bill, Haim Cohn - the Legal Advisor to the government - declared: "this Bill is the first fruit of the Department for Legal Planning. It is based on a wide comparative legal research, and it will be the first part of the Israeli civil code". The choice of this subject as the first Law is obvious. The inheritance rules of the young State of Israel legislated by the British Mandate's government, were extremely complicated and unclear. This was mainly caused by the British attempt to divide the jurisdiction of cases of inheritance and wills between secular and religious courts, just as it was done in marital laws. The aim of the Israeli Department for Legal Planning was to write a new, modern, secular law which would solve this problem, and would give the jurisdiction only to the secular court. Of course, the religious parties in the Israeli Parliament opposed the bill, and the legislative process ended only in 1965, after unusually lengthy debates.

In this paper, I want to demonstrate the American influence on shaping the new Law. Both the Israel State Archive and Harvard Law Library hold dozens of documents, written by members of the "Harvard-Brandeis Cooperative Research on Israel's Legal Development Program" during the 1950s. Assaf Likhovski already wrote about this unique program (10 Theoretical Inq. .L 633 2009), and I want to go one step further and show how American experts from Harvard and other universities, tried to shape the Israeli Inheritance Law (as well as other laws) according to their legal ideologies. The Israeli attempt to write a new law was an extraordinary academic challenge, and the Jewish members of the program found this to be a new way to aid the Zionist ideal, as well. In the proposed paper, I will try to deal with all the aforementioned, and with the question of how much American influence is still embedded in the Israeli Inheritance Law. The paper also tries to give a reason for the authorities in the State of Israel going to the trouble of hiding American involvement in the writing of the bill, as well as for the motivation of Harvard Law School and of American

jurists, some of whom had no link to Israel or Jewishness, in assisting in the writing of the bill. Beyond the challenge of writing a new bill for a young country, there was also an academic challenge therein: to harness comparative legal research to practical needs.

AMIHAI RADZYNER is a Professor of Jewish Law and Legal History in the Faculty of Law of Bar-Ilan University. His researches deal with Talmudic Law, history of Jewish law and its research, the history of Israeli law and current Halakhic family law in Israel. He has received numerous academic awards and grants over the years, including the 2008 Cegla Prize for the Best Article of a Young Legal Scholar in Hebrew, and the 2010 Tager Prize for the Best Article in Jewish Law.

Holographic wills: A Forgotten Dividing Line between Civil and Common Law and What it Means for Mixed Jurisdictions

Ronald J. Scalise Jr

Unlike many other areas of private law, Succession Law is often characterized as a native product of a system or tradition. The law of forced heirship, for example, is a classic mark of a civil law system, and the trust is a hallmark of the common law. Mixed jurisdictions have had the flexibility to adopt these characteristic institutions. To that end, Quebec has codified the trust but rejected the concept of forced heirship. In South Africa, the trust has had long-standing recognition, but virtually no modern conception of forced heirship exists. Scots law and Louisiana law, on the other hand, have adopted both a form of forced heirship and the trust. The reception of these institutions helps illuminate the depth and degree to which a mixed system has embraced a given tradition. Succession law contains yet another, often overlooked, institution that can help further elucidate the blend of civil and common law in a particular jurisdiction, namely the holographic will. The holographic will - a testament signed and written by the testator without the aid of witnesses – has existed since Roman times and has remained virtually unchanged in its requirements. They are omnipresent throughout the civil law world and are the most common types of wills in Germany and Switzerland. With few exceptions, however, they are virtually unknown in the common law world. They are not recognized under English law, the law of Australia, or the laws of many American states. Mixed jurisdictions have had an uneven reception of the holographic will. They are allowed in Louisiana, but not in South Africa. Israel and Quebec recognize holographic wills, but Scotland does not.

RONALD J. SCALISE Jr is the John Minor Wisdom Professor of Civil Law at Tulane Law School since 2009. He is also the primary author for the annual updates for five volumes in the Louisiana Civil Law Treatise series on property and obligations. In 2014, he was elected as an academic fellow to the American College of Trusts and Estates Counsel (ACTEC), and in 2015 was given the Leadership in Law Award by New Orleans City Business. In 2018, he was awarded both the Felix Frankfurter Award for law teaching and the John Minor Wisdom Award for the best civil law article published in the Tulane Law Review. In 2019, Professor Scalise was elected to membership in the American Law Institute.

The Effect of Fiduciary Obligations on the Maltese Civil Law Contract of Mandate

Kurt Xerri

Mandate is quintessentially a civil law contract; the etymology of "mandate" comes from the latin words of "manum dare", the symbolic handshake served to highlight the strong element of trust which is characteristic of this contractual relationship. Under the Maltese civil law system. mandate has always had a distinctive fiduciary nature and the mandatary is bound to carry out the mandate, remain within the limits of the powers given to him and answer for any fraud or negligence in his conduct. The introduction of fiduciary obligations into Maltese law in 2004 was mainly intended to cover financial services operations, however, its effect was diffused into the entire civil code. As a matter of fact Maltese law states that fiduciary obligations arise in virtue of contact where a person owes a duty to protect the interests of another person, including where the fiduciary owns or holds property for the benefit of the beneficiary. This definition clearly encompasses the sphere of mandate, whether in its ordinary or exceptional prestanome form. Although it may be argued that the mandatary is now subject to a higher degree of good faith, a look at Maltese jurisprudence reveals that the new provisions might have merely articulated what the Maltese courts had long been stating in their decisions. Duties of honesty and loyalty represented, inter alia, in the new express obligations not to receive undisclosed or unauthorised profits from the mandatary's position or functions had already been recognised in local judgments on mandate.

The notion of fiduciary obligations has, however, strongly enhanced protection in favour of the mandator in case of any breach of duty by the mandatary. This is mostly represented by the liability of third parties in bad faith. who assume fiduciary obligations by their very behaviour, and the new proprietary remedy in the case of a fiduciary drawing any unauthorised benefits through his acts. In addition, there is also the duty for the mandatory to keep any property as may be acquired or held in that capacity, segregated from his personal property. The paper will thus attempt to analyse in what way have fiduciary duties derived from English common law consolidated or even strengthened the Maltese law on mandate. The effects of fiduciary obligations on Maltese contract law will be viewed as an example of how mixed jurisdictions are more adaptable to change, particularly through processes which accommodate common law concepts in civil law systems.

KURT XERRI is a Lecturer at the Civil law department of the University of Malta. He holds a Doctorate and a Master of Arts degree in Law from the University of Malta and obtained his PhD on the regulation of the private rented sector from the UNESCO Housing Chair of the Rovira i Virgili University in Tarragona, Spain. His lecturing portfolio includes property and contract law, with a particular interest in housing and planning.

Common Law Contributions to the Maltese Rendition of the French Penal Code

Mark Sammut Sassi

In the early nineteenth century, being desirous of joining the codification movement that characterised their times, the Maltese asked for a new Criminal Code. However, the British administration needed a new Criminal Code to ensure that British criminals be tried according to laws that resembled those of the Mother Country. In an attempt to assuage tensions, the British Colonial Administration invited a young Edinburgh lawyer, Andrew Jameson, to review the draft Criminal Code prepared by a Commission of Maltese jurists. Jameson prepared two reports, which shed light both on the attitudes of common-law lawyers toward the peoples of the South and the "continental" system as well as on how a rendition of the French Penal Code was infused with common-law notions. This exercise could be compared to what happened in those years in the Ionian Islands.

The paper would propose to study Jameson's two reports and to draw an outline of the impact of early 19th-century common law on the reception of French penal law in a British colony. The paper would also obliquely deal with the nature of Scots law - is it really hybrid, or even Roman-based (as T.B. Smith argued) or is it really a common-law system? Should we be bound by the myths of 19th-century nationalism or is the national character of legal systems a product of "nationalisation" and "de-nationalisation" of law?

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PARALLEL SESSION:
Mixity in Public Law

Mixity in Maltese Public Law: The Constitution of Malta as a Microcosm of the Maltese Mixed Legal System

Kevin Aquilina

This presentation studies mixity as embraced by the Constitution of Malta. Although, at face value, the impression might be given that the Constitution is but another Westminster-modelled constitution bearing the characteristic imprint of a Whitehall constitution that was dished out to the newly independent emerging colonies during the period of decolonization of the early 1960s, a more insightful introspection reveals that several legal systems inhere in this single legislative act even if it is considered to be predominantly a common law artefact. Indeed, the Constitution has been inspired by, and draws upon, Italian Law, Public International Law, Canon Law, the law of certain foreign jurisdictions such as the United States of America and New Zealand, European Union Law, Council of Europe conventions, and, naturally, common law. This is not typical of the constitution itself but also of legislation

enacted under colonial times, bearing in mind that the Constitution itself is not the product of a Maltese Parliament but of a British Order in Council.

In this respect, the basic law of Malta can be considered to be a microcosm of the Maltese mixed legal system in so far as several legal systems operate within the Constitution in the same way that they interact within the legal system as a whole. Needless to say, this mixity does pose its own difficulties, more so where legal cultures from which it draws might not necessarily be in line with each other so much so that an element of conflict arises between the constitutional provisions themselves or in the interpretation afforded thereto by the judicial organ of the state. The presentation therefore identifies mixity in the Maltese Legal System and then illustrates how the organic law of Public Law (and the whole of Public Law for that matter), of which Constitutional Law is its pinnacle and the Constitution of Malta provides the edifice and foundations upon which the whole legal system rests, is a mixed concoction as the legal system itself. By studying the Constitution, one can grasp that even the Constitution is a mixed legal instrument in its own right that reflects Maltese Law that derives therefrom implying that mixity is a fundamental trait characteristic of the Maltese Legal System not only within the Private Law realm but even in its Public Law department.

KEVIN AQUILINA is Professor of Law at the Faculty of Laws of the University of Malta. He has served as the Dean of the Faculty and Head of the Department of Media, Communications and Technology Law, Head of Department of Criminal Law, and Head of Department of Public Law. Professor Aquilina has authored various books, written several reports for Maltese and foreign institutions, drafted many laws and regulations and has published papers in edited books and articles in peer reviewed journals in addition to various contributions to the print and broadcasting media.

The Enigmatic Creativity of Mixed Jurisdiction Jurists

Ignazio Castellucci

Comparative legal research, as an academic discipline, has had an interest in legal mixtures since its inception - on the other side, the existence of legal mixtures produced early phenomena of legal comparison, whether for speculative or operational reasons. Legal mixtures in the 'classic' sense - of different traditions negotiating their relative position in a given jurisdiction to gain supremacy, but not succeeding entirely in the task -have opened the way to further reflections, on how 'mixity' eventually produces, oftentimes, 'hybridity: the borders amongst different areas of responsibility apportioned to individual mixing systems or traditions become fuzzy areas, where new, specific normative products are developed out of the meeting of traditions. Agency plays a role, at the micro-level as well as at the macro-level: the operators of the competing traditions end up representing their respective communities of belonging, and the fora of their respective technical activities become negotiating places where normative solutions are developed and diffused, from the meeting of the various normative interests of the relevant communities. Individuals or institutions wearing two or more hats, representing different communities (typically, religious, political, socio-economic, professional, customary authorities, etc., also being vested with administrative, judiciary or legislative functions) represent one significant engine of

hybridisation: the resulting normative products are no longer corresponding to the black or to the white area of the original mixing systems, but rather to the grey area hailing from systemic interaction.

Normative agents at a micro-level produce innumerable legal products, and diffuse them, which in the previous couple of centuries could only circulate en bloc, in most cases, as parts of a major package (e.g., a code being exported, or a legal tradition being superimposed by way of political acquisition of territories). Legal/normative mixity, hybridity, and diffusion, thus, are not necessarily restricted nowadays to the private law realm, or to Western laws, or to secular laws. They are identifiable, indeed, in any interaction of communities expressing normative agents, and participating to this complex game, which can be a large as well as a thinly granular one- in public and private law, in transnational business law, in religious and traditional laws, etc. Ways and rules of this game may also be innumerable. It could be fruitful to conduct a review of various situations and dynamics of the kind described, to acquire specific knowledge, and perhaps to ground the initial development of an at least basic reading tool - if not a full-fledged theory - to read these dynamics. Methodologically, capitalising on the initial available theory of mixed jurisdictions (Palmer) and subsequent challenges or, better, complementing views (e.g. Oruçu), to move further ahead the line of questioning - from *'How mixed must a mixed system be?' to something like 'Given they all intermingle, how do they, precisely, do that?'*

IGNAZIO CASTELLUCCI is an Associate Professor of Comparative Law at the University of Teramo, Italy, also having earned the Italian national qualification as a Full Professor. His academic profile is internationally known, having researched and taught in many countries worldwide, with research and publications on general comparative law, international arbitration, global legal issues, geo-legal issues and security; and area legal studies on China, Asia, Africa, Islam, Latin America.

The Complex Hybridity of South African Criminal Law

Delano Cole Van Der Linde

Substantive criminal law is perhaps one of the best examples of mixity under South African law. The primary foundation of South African criminal law is Roman-Dutch law. This foundation, however, has greatly been influenced by English law due to the two English occupations of the Cape in 1795 and 1806. Today, criminal law, as well as criminal procedure and the law of evidence, maintain a distinctly mixed character. One of these examples is the Prevention of Organised Crime Act 121 of 1998 (“POCA”). POCA was originally enacted to deal with a trinity of crimes, namely money laundering, racketeering and gang activities (generically referred to as “organised crime”). POCA features strong asset forfeiture measures. The South African Parliament felt quite strongly that those who commit crime should not be rewarded based on their ill-gotten gains and should be divested thereof. The legislature looked to the United States Racketeer Influenced and Corrupt Organizations Act (“RICO”) of 1970.

POCA empowers civil forfeiture orders, broadly, for three categories of offences: property used as an instrumentality of an offence; proceeds of unlawful activities and property related to terrorist activities. These forfeiture orders form part of a comprehensive a two-step process. The National Director of Public Prosecutions, first, applies for a preservation order. This order places restrictions on the vexed property and prevents persons from dealing with it. The second step involves the actual application for forfeiture. What is unique about these proceedings, is that they are civil in nature. The State merely must prove on a balance of probabilities that the property falls within one of the three categories. This process is also independent from the substantive criminal trial in which the State must prove beyond a reasonable doubt that the accused committed some other offence under POCA, the common law or other statute.

South African courts have been quite pro-active in protecting both the accused as well as third parties in the forfeiture process. Courts have accepted innocent-owner and ignorant-owner defences. These defences protect against the potentially draconian impact that forfeiture orders might have on uninvolved third parties. For example, where the owner of a property unknowingly rents out their property to drug manufacturers, the ignorant owner can prove on a balance of probabilities that they had no grounds to suspect that the property was being used to facilitate unlawful activities. Our courts have also created a judicial requirement of proportionality which protects suspects. A court will balance a person's right against the arbitrary deprivation of property (enshrined under section 25 of the Constitution of the Republic of South Africa, 1996) against the nature of the suspected offence. Disproportionate forfeitures may not be granted.

I believe these provisions are excellent examples of the mixity of legal traditions as well as a mixity of the civil and criminal burdens of proof. Without necessarily stated as such, courts have also employed principles of a court of equity, protecting innocent third parties and arbitrary deprivation of property.

DELANO COLE VAN DER LINDE is a senior lecturer in the Department of Public Law at Stellenbosch University (SU). He teaches Law of Criminal Procedure 271 and Criminal Law 451. Dr Van der Linde's main field of research is organised crime and he has published several peer-reviewed articles in this field. He is currently a board member of the Pavocat Stellenbosch Academy, on the editorial board of the Journal of Contemporary Roman-Dutch Law, and a member of the Society Hugo de Groot. Dr van der Linde is also a contributor for South African Criminal Law and Procedure (Volume III: Statutory Offences). He has received funding from the National Research Foundation to conduct postdoctoral research, which enabled him to expand on his doctoral research.

Taxation Law as Hybrid Law

Henry Ordower

Tax law is public law under standard classifications, but it drives the economic terms of many, or even most, private law-governed transactions. In common law jurisdictions like the U.S., tax statutes served initially as a background for development and shaping of tax rules by the courts, but taxing statutes, and their interpretation by designated administrators, gradually became detailed and specific. Today federal tax laws form a civil law-type code which leaves little room for policymaking and development of tax law by the courts. In civil law jurisdictions like Germany, tax statutes, consistent with the civil law of the country, yield to public policy limitations, especially constitutional limitations, through judicial decisions. And general anti-avoidance rules (GAARs) have been enacted in many civil law jurisdictions. GAARs transfer the power to the administrator and the courts to disregard specific statutory rules and apply public policy, without legislative intervention, to limit and define the contours of the tax law in specific private arrangements. Civil tax law increasingly converges with common law rulemaking. This project proposes to introduce the hybridization of tax law as fertile ground for research by mixed jurisdiction jurists as tax law has grown to become a mainstay of comparative law research.

The presentation will introduce several examples of the transition in the U.S. from common to civil foundation of tax law and conversely examples in civil law jurisdictions where policy-based judge-made law supersedes legislative decisions. For example, the United States Supreme Court in Eisner v Macomber (1920) held that stock dividends were not income under the 16th Amendment to the US Constitution and were not taxable, but Congress in the 1980s disregarded the governing, common law precedent when it enacted mark-to-market taxation of certain transactions. In Germany, the legislature enacted a tax rate structure in its income tax law which the German Constitutional Court rejected for violating principles of horizontal and vertical equity not otherwise included in the taxing statutes. More recently, the international adoption by 137 countries of a general framework for a minimum tax requires the convergence of disparate income tax laws from both civil and common law jurisdictions to facilitate consistent operation of the minimum tax. Accordingly, this project may conclude that tax law is a hybrid bridging common and civil law and even embedding basic elements of religious law – tithing and the charitable contribution deduction, for example.

HENRY ORDOWER is Professor of Law and past co-director of the Center for International and Comparative Law and director of the Berlin Summer Program at Saint Louis University School of Law. In addition to research and teaching in United States and comparative taxation and corporate finance, Ordower has maintained an active consulting practice advising in tax planning, hedge and private equity funds & business structure, as well as providing expert testimony on taxation and business organizations in complex litigation. During leaves of absence from teaching, Ordower has been counsel to major St. Louis law firms and served as vice president and general counsel of an emerging markets hedge and private equity fund management company. Ordower has an extensive background in European Languages, including several years of Ph.D. work in Germanic and Scandinavian Languages at the University of Chicago. An avid traveler, Ordower has lectured and participated in various international legal conferences and has visited well over 100 countries.

PARALLEL SESSION:
The Erosion of Differences in Mixed Jurisdictions

Postcolonial Quandary: Revisiting Malta's Mixity through Linguistic Practices

Gianluca Parolin

One of the most influential works on the language question in Malta points in its conclusions to the irony that 'decolonisation and independence should have been accompanied by the permanent enthronement of the ultimate symbol of British domination: the English language' (Hull 1993: 367). Would the same apply to its legal system? Or, in other words, what can the linguistic practices of various semiotic groups reveal about Malta's multiple legal mixities?

In this paper, I propose to start this exploration from the linguistic practices that can be observed in three contexts conventionally associated with law: legal education, the courtroom, and public administration. Operating in these contexts are distinct semiotic groups (Jackson 1985) who thus develop distinct practices. While this statement can apply to any jurisdiction, in Malta it is particularly noticeable thanks to the remarkable linguistical differences of the syntactical structures or terminological choices made by members of the semiotic groups.

[1] Malta's Law School—purposefully called 'Faculty of Laws'—offers its courses in English. Maltese is relegated to citations of court rulings, which at times are even translated into English by the instructors. [2] After centuries of functioning in formal Italian, Malta's courts have turned to Maltese for now almost a century. Maltisation of court rulings fundamentally meant that since the 1930s court rulings display a mixture of Semitic syntactical structures and adaptations of Siculo-Italian terminology. [3] Becoming an official language of the EU in the early 2000s has been seen as having a tremendous impact on Maltese, in general (Harwood 2022). The translation of EU law into Maltese, however, is also adding a further layer of complexity to the functioning of the public administration in Malta.

The linguistic practices of the semiotic groups engaged in legal education, courtroom litigation, or the public service in Malta seem to point to a trajectory where the mixity of Malta's legal system is quickly being reconfigured with an erosion of its Continental element and an enhanced role for Anglo-American models and references. While this reconfiguration can be observed in other jurisdictions, the Maltese case seems to suggest that the 'language question' is at the heart of those developments in the archipelago.

GIANLUCA PAROLIN is a comparative lawyer working on constitutional design, State-Islam relations, citizenship, shifting semiotics of law, and images of law in popular culture. He holds a PhD in Public Law from the University of Turin, and is Professor of Law at Institute for the Study of Muslim Civilisations of the Aga Khan University in London, where he also leads the Governance Programme. He is the PI on an AKU-funded research project on law and language in the early-19th-century Eastern Mediterranean, with a focus on Egypt and Greece, and Malta as a test case.

Are All Jurisdictions Community? How Mixing Marital Property Rules Has Led Jurisdictions to Have Community Property"

Sally Brown Richardson

Historically jurisdictions in the United States and Europe have had distinct rules regarding the classification of property acquired during marriage, thus leading to clear results upon the couple's division, be it by divorce or death. However, as jurisdictions that classify property acquired during marriage based on the title of the property (i.e. classifying the property based on which spouse's name is on the title) create more equitable results for other spouse at dissolution of the marriage, these "separate property" jurisdictions have become more akin to community property jurisdictions. Similarly, community property jurisdictions have created more and more exceptions to the classification of community property (i.e. classifying more property acquired during marriage as separate property), thus making them more akin to separate property jurisdictions in their final outcomes of how property is divided between spouses at the termination of the marriage.

This article builds on an upcoming book chapter I wrote for the book Family Property and the Law (forthcoming 2023) by examining how different martial property regimes classify property acquired during marriage and what equitable results these jurisdictions have at dissolution. In doing so, this article asserts that jurisdictions, regardless of their classification rules, have become more or less "mixed." In other words, all jurisdictions attempt to achieve the same ultimate goal in equitably sharing property acquired during the marriage between the spouses, regardless of how that property was acquired or the classification rules of the jurisdiction.

SALLY BROWN RICHARDSON is the Interim Dean and A.D. Freeman Professor of Civil Law at Tulane Law. Dean Richardson specializes in property and community property law, and is the author of the textbook Community Property in the United States. Her scholarship has been previously selected for the Yale-Stanford-Harvard Junior Faculty Forum and she has received the President's Award for Excellence in Graduate Teaching, the highest teaching award offered at Tulane University. In 2021, Dean Richardson was elected to membership for the American Law Institute.

PARALLEL SESSION: Judges as Agents of Diffusion

The Courtroom: Theater of a Mixture of Methods

Noémie Etchenagucia

The purpose of this submission is to show how the judges' office, in mixed jurisdictions, is the theater of mixity. This analysis will focus on six mixed jurisdictions: Scotland, Louisiana, Quebec, South Africa, Israel and Porto Rico. These six systems are the result of the confrontation and blend between civil law and common law during several centuries. However, the dichotomy between civil law and common law is not sufficient to describe the specific particularities of the mixed jurisdictions. Civil law and common law own their respective methods in the courtroom. Civilian methodology is based on a deductive method

which uses syllogism, while the common law method is inductive with an emphasis on the use of precedents. The judge's office will use both methods simultaneously or in a complimentary way and therefore are not mutually exclusive. Since the beginning of the mixed jurisdiction, judges have used both methods to make their decisions. Thereby, it is common to find that in the judgments there are a lot of references to the legislative texts, precedents and doctrine in the same decision. This practice didn't stop with time. On the contrary, the analysis of the judgments rendered in 2021 confirms that it is still the case. This combination of the two methods is one of the many characteristics of the mixed jurisdictions; the precedents are often used in support of legislative texts.

In this combination, legislation and precedents, we can notice another mixed jurisdictions' particularity, the use of foreign precedents by judges. Indeed, judges will not hesitate to refer to foreign precedents during their reasoning. These precedents can be classified in three categories: first the "guiding", second the "must-have", and third the "hierarchical" precedents. Each of these precedents has a different role in the judge's reasoning and help to make a decision and solve the case. The analysis of different cases like, S.v Makwanyane', Association of Mineworkers and Construction Union and Others v Anglo Gold Ashanti Limited t/a Anglo Gold Ashanti and Others, The Association for Civil Rights In Israel v. Minister of Public security, Cruz Pérez v. Roldan Rodriguez and Others, Létournean 6RS [...], will show that the blend is present in different areas of the law: public law, criminal law, tax law, private law.

NOÉMIE ETCHENAGUCIA is an ATER PhD student (Temporary teaching and research associate), Comparative Public Law, "Research on "mixed" systems in comparative law" at UT1 Capitol (Université Toulouse Capitole). Her thesis title is: The so-called "mixed" jurisdictions, Formation and affirmation of a new legal family

European and US Influence of the Israeli Judiciary: Ambivalence and/or Coherence?

Arie Reich

The Israeli legal system is a rich and mature legal order, rooted in both Common Law and Civil Law.' As such, it is commonly considered to be a mixed jurisdiction. Due to its prestige and prominence, the Israeli judiciary, particularly the Israel Supreme Court, is entrusted with the task of gatekeeper, having to decide which Common Law and Civil Law doctrines, traditions and jurisprudence should enter the Israeli legal order and influence its evolution. The Israeli judiciary was founded on European models, including in particular that of Germany. Yet, Europe is losing ground on the judicial front, and like Israeli society at large, the Israeli judiciary increasingly resembles that of the United States. Consequently, and as demonstrated by the recent work of Arie Reich, the impact of the Court of Justice of the EU on the Israeli judiciary remains modest. Our research project attempts to advance a more nuanced and less binary argument. We postulate that the impact of Common Law on the Israeli legal order, mainly that of the U.S. legal order, is more evident in areas that are associated with economic efficiency (e.g. corporate law and securities law), whereas in other

private law fields which are focused on the protection of social values (e.g., Labour Law and consumer protection), the impact of Civil Law remains more prominent. We attempt to substantiate this argument with a comprehensive analysis of the Israeli case-law of the last twenty years, drawing on both quantitative and qualitative analysis. This approach on the part of the Israeli judiciary contributes to the maintenance of the Israeli legal order as a mixed jurisdiction. It also reflects the ideological roots of the State of Israel, both in the Jewish biblical tradition of caring for the weak in society and in socialist values, vis-à-vis the capitalist free-market oriented attitudes and policies prevalent in the Israeli public opinion and politics of more recent times.

ARIE REICH is a full professor at the Faculty of Law and the Vice Rector of the university. In the past he served as the Dean of the Faculty and the Dean of Students. He is a world-renown expert in International Economic Law and holds a Jean Monnet Chair in European Union Law and Institutions. Prof. Reich has published over fifty books and articles in academic journals in Israel, Europe and North-America. He has also served as an arbitrator in international trade disputes, among them disputes between states, such as China, the EU, Russia and the USA, adjudicated in WTO dispute settlement panels in Geneve.

PLENARY SESSION

The Evolving Mixity of Maltese Private Law: From Commercial Law to Human Rights

David Edward Zammit and Max Ganado

This paper has three objectives. Firstly we document the trajectory that Maltese Private law has taken over roughly speaking a century from the early decades of the twentieth century, when Common law first started to make its presence felt in our Civil jurisprudence, until the current post-Covid era; in which significant portions of our Private law legislation have been imported wholesale from the Common law world. Secondly and in the light of Malta's 1964 Independence Constitution, the 1987 European Convention of Human Rights Act and the legislative changes which took place in the period immediately before and after EU accession in 2004, we explore the implications of changing ways of conceptualising Maltese legal mixity to the protection of Human Rights. We identify a clear correlation between a 'compartmentalised' approach to legal mixity, characteristic of Maltese jurisprudence and law teaching in the late twentieth century, and a deep divide between Private and Public Law which in the same period posed apparently insuperable obstacles to attempts to interpret our Private law from a Human Rights friendly standpoint. Yet we also show how the contemporary abandonment of this compartmentalised model, resulting from the overspill of Common law principles, legislative texts and case law models out of their neat compartments and their diffusion throughout our Private law, offers the promise of re-integrating our system along a continuous gradient of legal hybridity. Finally we acknowledge our intellectual debt to the work of the late Maltese jurist and Roman law professor Joseph M Ganado, by showing how two papers he wrote in 1950 and in 1996 provide us with the crucial paradigms in terms of which the evolution of Malta's post-war legal mixity must be understood.

MAX GANADO has been practicing law for close to 40 years. He started his career as a maritime lawyer dealing with all aspects of shipping, including ship finance. He became a Partner of the firm in 1986 and moved on to develop the financial services practices at Ganado Advocates. Max has been delivering lectures on varied subjects for a number of years, having been actively involved in disseminating education to the Maltese legal professions and Maltese law students. He has published various articles and has acted as editor of a number of publications.

DAVID EDWARD ZAMMIT holds a Doctorate in Law from the University of Malta and a PhD in Legal Anthropology from the University of Malta. He is a full-time Senior Lecturer at the Faculty of Laws, Head of its Department of Civil Law and Founder-Director of the University of Malta Law Clinic. He has conducted anthropological field research in Maltese courts and legal offices and his research interests span the fields of legal anthropology, tort law and legal narratives.

PARALLEL SESSION:
Mixity as a Tool of Post-Colonial Governance

Codified Legislation Based on a Common Law Approach: The Case of FGM Regulation

Jeanise Dalli

This paper takes the regulation of the customary practices of Female Genital Mutilation (FGM), within the mixed jurisdiction of Malta, as a case-study to explore the interface between ad hoc codified legislation and special legislation based on common law models. Maltese criminal legislation has been largely inspired by and based upon the Civil Law approach. At the same time, to date, it is significantly influenced by Common Law. Being a former British colony, the Maltese legislator still looks to the United Kingdom (UK) when legislating on specific matters. This has also been the case with the enactment and criminalisation of FGM legislation in 2014, by introducing specific legal provisions within the Criminal Code of Malta.

In this contribution I propose to explore the enactment of and motivation behind FGM legislation in Malta. Indeed, the introduction of specific legislation against FGM in Malta has been influenced by international developments, namely by international and regional human rights instruments, including women's and children's rights legislation which also add to the internal plurality of legal approaches upon which Maltese legislation, procedure and legal institutions are based. At the same time, by comparing the chosen regulatory model to address the "crime" of FGM in Malta to the model adopted in the UK as a common law jurisdiction, this paper argues that although the Maltese model, be it codified, appears to apply to all residents in Malta - be they citizens or migrants - the enactment of specific legislation within a code, not only reflects a Common Law approach, but also appears to be targeting and singling out a specific group of legal subjects, namely migrants coming from FGM-practising countries, hence almost targeting personal status, rather than conduct. This is noticeable particularly when considering that the enacted legislation is rather draconian and that such customary practices were already prosecutable by other general criminal provisions within the same Code.

The paper further argues that just as FGM legislation was enacted in the UK, back in 1985, with the specific aim of targeting specific "alien" practices practised by migrants living in the UK but originally coming from FGM-practising societies, Malta's criminal legislation on FGM, albeit applicable to everyone living on the Maltese islands, is somewhat reflexive of the social and political sentiment towards migrants in Malta who are often perceived as vulnerable, uneducated and "lesser" legal subjects, in need of "control" and, at the same time, of State protection. With reference to UK decisions on the subject, the paper will question whether Malta's attempt to regulate, punish and deter such "migrant" practices using a Common Law approach, could have adverse legal and social effects, both in terms of the effective implementation of FGM legislation as well as for the integration of migrants in Malta within the Maltese society. Although the focus will be on Malta and the UK, this contribution will also briefly refer to a few other mixed and continental jurisdictions for the purposes of exploring whether such an approach at regulating customary practices (which are not normally performed by the mainstream population) by resorting to the Common Law method, is a newly emerging mode of regulation within mixed and continental jurisdictions.

Dr Jeanise Dalli graduated with a Doctor of Laws from the University of Malta. Her thesis focused on the regulation of Female Genital Mutilation in Malta and she is now furthering her studies on the topic at PhD level with Martin Luther University in Halle-Wittenberg, Germany. She is an assistant lecturer in the Civil Law Department at the Faculty of Laws, University of Malta where she lectures on Refugee Law, Family Law and Advocacy Skills. She is also an associate of the Department 'Law and Anthropology' at the Max Planck Institute of Social Anthropology in Halle (Saale), Germany.

A Legal-Geographical Examination of the Transformation of the Susiya-Area in the Occupied Palestinian Territories 1967 to 1998

Quamar Mishirqi-Assad and Alexandre (Sandy) Kedar

Focusing on the specific but representative case of changing the Susiya region, within the Shafa Yatta area, between 1967 and 1998, this paper examines Israel's extensive and ongoing application of the mixed legal system in the occupied territories (OPT) in order to seize and encroach on Palestinian lands, as a gradual, dynamic, systematic, and purposeful process that has shaped space and demography in the Susiya region in ways that serve the Jewish settler population while simultaneously adapting and reducing the local Palestinian space. Through legal processes taken by the state, a new settlement space was created, which erased and replaced parts of the Palestinian space that existed in that place.

Since 1967, when Israel conquered the West Bank of the Jordan River (OPT), several layers of laws in general and laws pertinent to land are in force. These include the Ottoman legislation (influence by continental as well as Muslim law), and particularly the Ottoman Land Code of 1858, the British Mandate (1917-1948) legislation and case law, the Jordanian legislation (a mixed legal system) and then international law, Israeli military and civil law (considered by many as a mixed legal system). The issue is examined by a legal analysis of the ways official-legal proceedings (such as declaring lands as "state-lands", reallocating

these lands, and expropriations for public purposes by the military commander) analysing court deliberations, use, abuse and navigate this amalgam of legal heritage. In doing so we apply insights from social sciences, and specifically from critical-legal geography theory and the concept of settlement and colonialism. Despite the import of academic legal discussion and critical analysis of land policy and its implications for the residents of the region and for Israel, legal-academic writing on land issues in the territories from a critical legal, geographical, and societal perspective is limited. In addition, the legal-critical discussion concerning the Susiya area in particular is new, hence the importance and originality of this paper. The paper examines the processes of expropriation, but also provides a platform for the voices and narrative of the local population, highlighting their resistance and reactions to these processes by delving into the examination of social-spatial links, unaddressed in existing research.

QUAMAR MISHIRQI - ASSAD is an expert on local and land law in the occupied territories, international human rights law and humanitarian rights law. She has been legal counsel to Haqel's beneficiaries since 2005. Prior to co-founding Haqel, Quamar set up and managed the legal department at Rabbis for Human Rights for 12 years. As a Palestinian, she has the unique ability to identify with and work for justice for landowners throughout the OPT. More and more landowners turn to her for assistance, having witnessed unprecedented successes of their neighbors. She is currently studying for her doctorate.

ALEXANDRE (SANDY) KEDAR teaches at the Law School at the University of Haifa. He holds a Doctorate in Law (S.J.D) from Harvard Law School. His research focuses on legal geography, legal history, law and society and land regimes in settler societies and in Israel. He served as the President of the Israeli Law and Society Association, is the co-coordinator of the Legal Geography CRN of the Law and Society Association and a member of its international committee. He is the co-founder (in 2003) and director of the Association for Distributive Justice, an Israeli NGO addressing these issues.

The Future of African Indigenous Law

Enyinna S. Nwauche

In this presentation, I construct a future of African Indigenous Law instructed by a colonial legacy tempered by the reality of post-colonial crisis, hopes, aspirations, failings and constructed around an anthropological account of law in African States. It will be shown that the 'hidden', 'subtle', 'contextual' and 'overt' reconstruction of African legal systems around indigenous law principles is ongoing in several areas through the constitutional and legislative renegotiation of women's participation in indigenous communal land tenure; the introduction and recognition of indigenous justice mechanisms as part of national procedural frameworks; the application of different shades of indigenous ideas of community solidarity and dignity in statecraft; the reconstitution of African indigenous communities; novel ideas around lifestyle audit as the basis of choice of law and a fluidity of what it means to be 'indigenous'. In equal measure, this presentation interrogates the challenges, obstacles and difficulties that hinder the survival and thriving of African indigenous law as Africans negotiate norms of and for the common good.

ENYINNA S. NWAUCHE teaches and researches in the area of innovation law and policy in Africa; Law and religion in Africa and communities culture and communities in Africa. He has published extensively in local and international peer-reviewed publications; is a member of the editorial boards of the Constitutional Court Review, and Speculum Juris. He is a tutor at the WIPO Worldwide Academy. Prof Nwauche received his Bachelor of Laws (LLB) and Master of Law (LLM) degree from the Obafemi Awolowo University Ile-Ife. He also has a Doctor Legum (LLD) from the North-West University (Potchefstroom campus). South Africa. Prof Nwauche teaches at the Nelson Mandela School of Law University of Fort Hare.

PARALLEL SESSION:
Dialogues Made Possible Through Mixity

Judicial Dialogues in Mixed Jurisdiction Courts: How Civilian and Common Law Judges Converse on Canada's Supreme Court

Rosalie Jukier and David Howes

Canada is a bijural country where both the civil law and common law legal traditions co-exist. The province of Quebec, a mixed jurisdiction[1], follows the French civil law tradition in the realm of private law, whereas in areas of public or federal law, it follows the English common law tradition applicable in the rest of the country. The Supreme Court of Canada, created in 1875, has served as the highest appellate court in the country since 1949 when appeals to the Privy Council were abolished. The Supreme Court consists of nine justices, three of whom must be Quebec jurists.[2] The result is a bijural or mixed court which hears appeals from all Canadian provinces and where all judges are eligible to render judgments, regardless of the legal tradition of the judge or the province from where the appeal originated.

Given the mixed nature of the judiciary and the appeals coming before the Canadian Supreme Court, the role that comparative law should play in the Court's decisions is undeniably an important question. And, as might be expected, over the Court's almost 150 years of existence, there has been a diversity of judicial opinions about such role.

This paper will examine the "conversations" between Supreme Court judges in order to uncover the diversity of ways the exchange between the civil and common law, and their mutual influence, has been conceptualized. Some of these conversations take place in real time between judges speaking to each other in concurring or dissenting opinions within the same case.[3] Other conversations are more nuanced and implicit, with judges adopting different positions from other judges who sat on the Court in a previous era.[4]

[1] Vernon Palmer, "Quebec and Her Sisters in the Third Legal Family", (2009) 54 McGill LJ 321.
[2] *Supreme Court Act*, RSC 1985, c S-26, ss 5–6. See also *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21.
[3] This is the case in two recent decisions dealing with the duty of good faith in common law Canada: *C.M. Callow Inc v Zollinger*, 2020 SCC 45 [*Callow*] and *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 [*Wastech*].
[4] This is the case with Justice Mignault, who served as a justice of the Supreme Court from 1918–1929, reacting to the views of Justice Taschereau who was on the bench between 1878–1906.

Are the two major Canadian legal traditions "like two massive jigsaw puzzles… [where] the pieces are cut differently so that pieces from one cannot fit (or at least fit easily) into the other"?[5] Or, by contrast, is the co-existence of the civil and common law an "opportunity for dialogue between these legal traditions" as "a source of inspiration"?[6] Should the traditions aim towards harmonization? Or is the appropriate response context-dependent?

This paper will outline the various exchanges between the civil and common law in contemporary and historic decisions of the Supreme Court of Canada with a view to presenting multiple conceptions of the important interrelationship between the civil and common law legal traditions on this mixed Court. Both Professors Jukier and Howes have engaged with this question in previous publications[7] but very recent decisions of the Supreme Court have reignited the debate about the proper place of comparative law on the Court, meriting a deeper examination of this judicial conversation across the Court's 150-year history.

Rosalie Jukier, a graduate of McGill and Oxford, is a Full Professor in the Faculty of Law at McGill University where she has been teaching since 1985 in both the civil and common law. Her teaching has been recognized with multiple teaching awards, both at the Faculty and University level. Her research focuses on the comparative law of contracts, civil procedure, the impact of legal traditions, and legal pedagogy, particularly "transsystemic" pedagogy. A member of the Quebec Bar, she has held many senior academic administrative positions in the University (Dean of Students), and within the Faculty of Law (Associate Dean, Graduate Studies and Associate Dean, Academic). She has also served as senior advisor to the National Judicial Institute, an organization dedicated to judicial education.

David Howes is an Adjunct Professor in the Faculty of Law at McGill University, and a Full Professor in the Department of Sociology and Anthropology at Concordia University, Montreal. He was appointed Distinguished Research Professor in 2021. Recent publications include: The Sensory Studies Manifesto: Tracking the Sensorial Revolution in the Arts and Human Sciences (University of Toronto Press, 2022) and Sensorial Investigations: A History of the Senses in Anthropology, Psychology, and Law (Penn State University Press, 2023). Homepage: https://www.concordia.ca/faculty/david-howes.htmleducation

Mixité sans frontières. The 1950 Dissemination of Louisiana Public and Private Law Publications in French Legal Institutions

Agustin Parise

On 27 May 1950, the Louisiana State Law Institute (ISLI) presented a number of its publications to a selection of French legal institutions (i.a., Faculties of Law, National Library). The gathering took place in New Orleans and included speeches by leading figures

[5] *Callow*, *supra* note 3 at para 162 (per Brown, J.).
[6] *Ibid* at para 60 (per Kasirer, J.).
[7] See Rosalie Jukier, "Canada's Legal Traditions: Sources of Unification, Diversification, or Inspiration?", (2018) 11:1 J Civ L Studies 75 and David Howes, "From Polyjurality to Monojurality: The Transformation of Quebec Law, 1875–1929", (1986–7) 32 McGill LJ 523.

of the Louisiana legal community (i.a., John H. Tucker, jr.) and the French Consul General in New Orleans. The publications included both private and public law resources, namely, the Reprints of the 1825 projects of a civil code and of a code of practice, the Compiled Edition of the Louisiana Civil Code, the Louisiana Criminal Code, and the Louisiana Revised Statutes of 1950. The LSLI aimed to disseminate the Louisiana heritage and mixite to the Francophone readership, laying a transatlantic bridge amongst jurisdictions. Those publications were mailed across the ocean and were placed in library stacks. The library of the Édouard Lambert Institute of Comparative Law (Lyon, France) holds copies of those publications. The author of this presentation experienced a serendipitous finding when coming across a copy of the programme for the New Orleans gathering within one of the publications held in Lyon. The programme includes the names of speakers and transcriptions of their speeches, the food they were served, and the toast that was offered: "To our Civil Law. May its principles of liberty and equality lead a troubled world to freedom and to peace."

This presentation will be divided into four parts. First, it will focus on the LSLI and the four publications. This will show the interest in both private and public law. Second, it will share information on the speakers at the New Orleans gathering. The interest of some of these actors, both in comparative law and legal history, will be addressed. Third, it will elaborate French institutions that received copies of the publications. Many of these institutions were and still are) key repositories for French researchers, acting as platforms to disseminate the Louisiana *mixité*. Fourth, it will explore the impact of the LSLI publications. The exploration will be done by tracing references to the publications within law reviews, as retrieved from the online databases of WestlawNext and HeinOnline. The presentation will therefore aim to highlight that the collegiate efforts of the ISLI could serve as a means to disseminate the *mixité* of Louisiana without borders.

AGUSTIN PARISE Agustín Parise is Associate Professor of Law and Vice-chair of the Faculty Council at the Faculty of Law of Maastricht University. Agustín is Secretary-General of the International Association of Legal Science (IALS) since January 2022. He was Director of Scientific Studies of IALS during the period September 2016 to December 2021. Agustín was elected Associate Member of the International Academy of Comparative Law (AIDC) in 2017. He is also the Editor of the journal Comparative Legal History (UK) and Associate Editor-in-Chief of the Journal of Civil Law Studies (USA). Agustín is since 2016 the coach of the Dutch National Team to the International Client Consultation Competition.

How to Build Historical Social Acceptation Under the British Rule of Law in Old French Colonies: Quebec and Mauritius Under Civil and Commercial Law (1760-1810)

David Gilles

In the eighteenth and beginning of the nineteenth century, if common law systems were criticized by reformers and comparatists, the era of French codification, promote civil law in the old French colonies under UK empire rule law: Quebec and Mauritius. These two countries inherited a mixed system from their colonials' times with various sources of law.

The example of commercial law, and the choice of the legal framework for their system show how, governors, judges, law practicians and economic leaders build an original way to find the perfect mix between civil roots and common law dynamic. Debates around the choice of *Lex Mercatoria* roots marked these two countries. How did commercial law reflect changes in that crucial locus of encounter between law traditions and society? For these two countries, civil law and mercantile system are at the heart of the negotiation after the Conquest. In Quebec, the Conquest and the Royal Proclamation (1763) seem to rule the old New France territory under hegemonic common law. Legal disobedience, ADR, governors open to French law, French practicians, versatile common law court and demographic balance of power build the roots of a mixed system. Old French Canadian's scholars' tradition saw the Conquest bringing a clash of legal and institutional cultures that played out notably in the ultimately successful battles of the Canadians to preserve their traditions. More common, though, were conscious efforts to retain elements of existing institutions and limit legal change as a way of sustaining social order. For Quebec, Royal Proclamation constituted the aggressive attempt, and Quebec Act represent the accommodation. Conquered and colonized groups usually sought, in turn, to respond to the imposition of law in ways that included accommodation, advocacy within the system, and subtle decline of legitimation. If there were a few social resistances under the common law rule from 1760 to 1774, the Common law courts, especially the Common Plea court, work with the French notaries for accommodation, using medietate linguae jury and arbitration led by French notaries.

For Mauritius, perhaps the confrontation between civil law and common law was less difficult. The Mauritian civil law was inspired by French customs and the French Code Napoléon, during the French occupation (1715-1810) and maintained by the British Empire (1810-1968) when Article 8 of the Capitulation Act 1810 stipulated that the inhabitants of the island would "maintain their religions and customs". In the two countries, this legal work after the Conquest succeeds to protect the Civil Law with some English amendments. UK Common Law still controls some subjects, such as the law of evidence. English and French doctrines also influence the law and the courts of these two countries. All legal choices were not the same. Mauritius applies the French Penal Code or tort law, and Quebec the English criminal Law, and French responsibility law. This paper will try to show how and why these different choices have been made**.**

DAVID GILLES is a professor at the Faculty of Law of the Université de Sherbrooke since 2009. He began his training at the Faculty of Law of the University of Strasbourg up to the Master's degree. He continued his graduate studies at the Faculty of Law of Aix-en-Provence. His master's thesis was on La notion de représentation chez les Enragés written under the supervision of Professor Michel Ganzin. Since 2012, he is a visiting professor at the University of Paris V. He is currently focusing his research on the history of legal doctrine and reviews, the legal framework surrounding the seigneurial regime and its impact on Aboriginal communities.David Gilles is a regular researcher at the Centre de recherche sur la régulation et le droit de la gouvernance.

Friday 16th June

PARALLEL SESSION: Mixity and EU Law

Is the Mixity of Maltese Corporate Law About to be Compromised?

Tiziana Filleti

Maltese Corporate law offers a striking opportunity to examine how particularly in this area of law salient legislative developments that took place in Maltese law (a hybrid legal system) seamlessly bring together elements of English law? (a common law system), Italian law? (a civil law jurisdiction) as well as additional elements incorporating the harmonised rules laid down under European Union law? and International Law. Bearing in mind Malta's deep-rooted legal tradition, it has repeatedly been pointed out that the fusion of Maltese law and European law offers a unique sui generis legal scenario worthy of consideration. Attard succinctly describes the Maltese legal system as one that is… "*based on the Civil law tradition. Its modern period dates back to the introduction (ironically) by the British colonial administration of codes largely based on Civil law sources. Decades of British rule exposed the Maltese Legal system to English law; an influence which continued after Independence in 1964. This applies to many branches of contemporary Maltese Law ranging from Public Law to other branches of law, such as Company Law, Fiscal Law, and Maritime Laws.*" A remarkable quantum leap, in the form of substantial changes in the Maltese corporate law system, can be said to have taken place post-1987.

Subsequently other significant changes occurred domestically in the aftermath of the Price Club supermarket chain fiasco which left numerous creditors unpaid and exposed the lack of adequate safeguards for creditors. This bad experience triggered a number of legislative developments largely modelled on English Corporate law. As a result, the Maltese legislative provisions by and large were heavily influenced by English law. This fact has been expressly recognised by the local Courts in various judgments such as in **Brava Limited vs Sakaras Holding Limited®** where it was observed that " *in the drafting of our new law governing companies, the chosen model was that the English Companies Act 1985. Under English law, dissolution and the consequent winding up of companies is governed by ad hoc legislation which is the Insolvency Act 1986. In 1995 when the new Companies Act was passed (today Chapter 386 of the Laws of Malta) it replaced the Commercial Partnership Ordinance 1962, the provisions dealing with dissolution and winding up were incorporated in the 1995*" See English Companies Act 1985; Insolvency Act of 1986.

TIZIANA FILLETTI graduated with a Bachelor of Arts (Legal and Humanistic Studies) in 2001, with distinction and Doctor of Laws in 2004 from the University of Malta. She was later awarded her Masters of Law in Public International Law, Shipping Law and the Law of the Sea at the International Maritime Law Institute. As a Chevening Scholar, she also read for a Masters in Law in Corporate Law, Corporate Insolvency Law, International Dispute Settlement and Law of the Sea at the University of Oxford. She is presently a Lecturer in the Faculty of Laws at the University of Malta.

The Transposition of the EU Directive on representative actions for the protection of the collective interests of consumers. Lessons from mixed jurisdictions

Ana Mercedes Lopez Rodriguez

The Directive (EU) 2020/1828 of the European Parliament and of the Council, on representative actions for the protection of the collective interests of consumers has introduced a procedural model of collective redress for consumers in the EU. The modern class action was first adopted in the United States and most jurisdictions refer to the "American class action" as a model, if not to emulate then to avoid. Outside the United States, class action procedures were also adopted in the common-law jurisdictions of Australia and Canada before civil law jurisdictions followed suit. The exception is Quebec, the Francophone Canadian province, that already enacted a class action procedure in 1978. Quebec is a mixed jurisdiction, like the less than twenty jurisdictions that use both common law (court authority) and civil law (legislation) around the world. Most of these jurisdictions already allow group proceedings, perhaps due to their familiarity with the common law.

The EU Directive is inspired by certain aspects that are present in the US model of class actions. However, throughout the drafting process, the European Commission has tried to move away from the American system. As Member States are in the process of transposing the Directive into their legal systems, it seems appropriate to look into other jurisdictions that do not exactly reproduce the American model. In particular, mixed jurisdictions can provide inspiring examples on whether to implement an opt-in or opt-out model, the types of representative actions that can be brought (Art. 7 Directive), third-party funding (Art. 10 Directive), the disclosure of evidence (Art. 18 Directive), the adoption of injunctive measures (Art. 17 Directive), whether consumers can accept or refuse to be bound by redress settlements (Art. 11 Directive) or the allocation of costs.

Ana Mercedes Lopez Rodriguez has a PhD degree in Law from the University of Aarhus (Denmark) and law degree from the University of Seville. She is a tenured associate professor of Private International Law, Comparative Law and Arbitration at University Loyola Andalucia. Ana also holds a tenured position as senior legal manager of the Andalusian Regional Administration (currently, on leave). Her research and teaching interests are in international commercial and investment arbitration, comparative law, private international law, international sales, EU law and Legal Tech. She speaks several languages, including Spanish, Danish and English. Ana has had a number of academic positions at the University of Aarhus, University of Seville and Universidad Loyola Andalucia, where she has been Head of the Law Department. She has participated in various visiting professor programs in European universities. In addition, she has been a visiting scholar at Loyola University Chicago School of Law (2016) and Stanford Law School (2022). Ana has experience as an independent arbitrator in international cases and substantial expertise in the elaboration of legal reports for law firms, public authorities and private parties in Denmark, the UK, Spain and Finland.

Is European Union Law a Typical Mixed Legal System, or Is It a Civil Law System With Common Law Influence?

Ivan Sammut

Like most states around the world, European Union Member States are typically classified as civil law or common law states or states with mixed jurisdictions. Member states of the EU come from all three main legal families. So what type of legal order is the EU legal order? What type of court is the Court of Justice of the European Union (CJEU)? Does the EU combine civil law and common law in an obvious way? Civil law is characterized by more generalized, codified laws, while common law distinguishes itself by specialized case law. Prima facie, the EU has many treaties and regulations that may be seen as codes. Its law is also further shaped by case law by the CJEU. Thus, the EU merges civil law and common law elements. Decisions by the CJEU, however, resemble more interpretative decisions by civil law courts than creative rulings by common law courts. Consequently, it can be argued that the EU does not fulfil this first criterion and can not be considered a mixed jurisdiction in the traditional sense. Instead, the EU is a brainchild of civil law countries that was assigned to the few common law members. This situation may be the opposite of how mixed legal systems developed historically. In that regard, mixed jurisdictions may still help resolve issues of reception of EU law in common law member countries.

The first part lays down the main characteristics of civil, common and mixed jurisdiction. The second part then explains the characteristics of the EU legal order and tests them against the characteristics of each of the traditional legal families. The third and final section then compares the role and aspects of the court systems of each of the aforementioned legal families. It then examines how the CJEU has drawn its inspiration from the characteristics of these different types of the national court. A brief conclusion follows this.

IVAN SAMMUT is a resident academic and holds a Jean Monnet Chair in EU law within the Department of European and Comparative Law at the Faculty of Laws of the University of Malta, where he has taught and researched since 2005. He also acts as a freelance EU law consultant with various local law firms and has authored several European Commission reports. As a practising lawyer in Malta, his practice specialises in EU law. In 2013 he was appointed a senior lecturer and a coordinator of a Jean Monnet module dealing with EU legal drafting and translation. He is also the author of a monograph entitled Constructing Modern European Private Law - A Hybrid System, published by CSP in the UK and an editor in several edited academic books.

PARALLEL SESSION: Tort Law as a Vehicle for the Hybridization of Private Law

Proportionality in Israeli Law of Torts - a Mixture of Public Law Values and Private Law Liability

Tamar Gidron & Ihsan Kenaan

Israeli legal system illustrates various mixites. Mixture of Common Law and Civil Law is the obvious example that renders the system part of the "third legal family". Mixture of secular law and religious law is an additional phenomenon. Mixture of "imported" American First Amendment freedom of speech and German personal honor protection is yet another typical feature. This paper aims to reflect on the budding mixture of the proportionality test, that has become one of the leading tools of Israeli public law in the last few decades, and Israeli law of tort. This mixture characterizes the ongoing development of Israeli law through the work of the Israeli judiciary that is constantly looking for new ways to enrich tort law with modern workable tools. This mixture not only shows public law measures used to develop and modernize the private law of tort but also exemplifies how judge made law plays a leading role in the construction of the Israeli Tort Ordinance (new version) 1968- originally one of the most important pieces of legislation by the British Mandate of Israel (1947) that to date still governs Israeli Tort regime. This "double mixture" is a typical feature of Israeli law.

The first and foremost argument of the paper is that proportionality had already settled within Israeli tort case law, alas with no explicit reference to the uniqueness of this "match-making" of public and private legal thinking, and even without adequately acknowledging the need for a theoretical basis for such practice. The second argument then follows this relatively new development, and aims to fill the said double void- explaining the use of one of the most important and well settled notion of public law in solving private accidents law problems, and suggesting a unifying theoretical justification for doing so.

"Proportionality" has a double meaning in Israeli public law. We argue that both are currently applied in tort cases as part of liability tests- mostly in negligence cases- as well as in decisions on remedies issues, and rightly so.

TAMAR GIDRON a former dean of the Law Faculty in Zefat Academic College, Israel. Currently she is a full faculty member at the Zefat Law School and Head of the Zefat Academic Research Center for Bioethics. Prof. Gidron specializes in human rights law, media law, tort law, commercial torts and medical law. She is a member of the Israeli Bar Association and acted as member of various public legal committees.

Causation in Japanese Tort Law from the Perspective of Mixed Legal Systems

Emi Matsumoto

In my previous studies, I argued that the laws of different origins have been mixed in Japanese tort law, and that the courts show a very different attitude towards this mixed nature of law, from the academic doctrines.

The article 709 of the Japanese Civil Code writes as follows: A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

The traditional academic doctrine is as follows: the general rule set out by this article consists of four elements. as follows: infringement of the right of others, negligence, damages, and causality between the act and damages. Then, the court introduced the German notion of "unlawfulness" (Rechtswidrigkeit) in order to expand the range of the protection of the victim. But academic lawyers criticized the judgments for the reason that the elements which the courts employ overlap one another. I argue, however, that these different notions are applied by the courts for different types of infringement. In this sense, the courts' practice becomes similar to that of the Common law, where different elements are required according to different kinds of torts. Emi Matsumoto, "Tort Law in Japan", in M. Bussani and A. Sebok (eds.), Comparative Tort Law. Global Perspectives, Edward Elgar, 2015, 2nd ed., 2021, p.373-396.)

In this paper, I shall explore the notion of causation, which constitutes one of the basic elements in Japanese tort law. I shall focus on the cases of the compensation for damages caused by the nuclear power plant in Fukushima, following the earthquake and tsunami on 11 March 2011. The special committee was established for settling this issue for the purpose of establishing the guidelines for compensation (the Dispute Reconciliation Committee for Nuclear Damage Compensation). Interestingly, at the committee, the discussion was focused on whether there was an "adequate causal link" between the nuclear accident and the damage in question. The cases which recently appeared also discussed the issue of the adequate causal link, which, academics argue, was taken from German doctrine of compensation in contract law. I try to examine which leads to the better understanding of these cases, the notion of adequate causal link or of economic loss in Common law.

EMI MATSUMOTO read law at Tokyo (LL. B.), studied French law at Paris II and obtained docteur en droit there. Her main research areas are modern French legal history (especially commercial court) and modern Japanese law from the aspect of mixed legal system. Major works include: La juridiction consulaire dans la justice de l'Ancien Régime. Rivalités et conflits avec les autres juridictions, thèse, Paris II, 2002 and essays on Boissonade and Bogišić.a Professor at the Department of Law of Aoyama Gakuin University in Tokyo, Japan. She is specialised in Legal History, Comparative law and French law.

Applying Human Rights Horizontally in Malta's Tort System

Juliette Galea

This contribution is from the standpoint of a Personal Injury Lawyer who has a wide experience of assisting victims in tort cases; not only before the Maltese Courts, but also before the English and Strasbourg Courts. In Tort law, the underlying dynamic both in civil and common law systems is to provide redress to the victim's person and property and the application of Human Rights to the area of tort can bring about redress uniformity in counties coming from different legal traditions so that in jurisdictions (such as Malta) where traditionally the injured party in tort is only indemnified according to economic capacity can have a fuller range of rights acknowledged and redressed by the courts (where a breach occurs). This contribution focuses on the intervention of the Strasbourg Court in Brincat vs Malta; where this Court interpreted the positive obligations of the Maltese State to protect the right to life of a worker in a state-owned enterprise who had died as a result of exposure to asbestos during his work. In this case the European Court of Human Rights concluded that inasmuch as the Maltese Civil Code did not appear to permit the compensation of moral damage in such Tort litigation, access to a human rights remedy had to be granted because ordinary law was not capable of providing a sufficient remedy to such a human rights violation. In so doing Strasbourg facilitated the direct Constitutionalisation of Maltese Tort Law; so that future Tort litigation against the Maltese Government which could be construed as a human rights violation could go directly before the Civil Court in its Constitutional Jurisdiction.

This process of applying human rights in Maltese Tort law was initiated by Brincat vs Malta and has led to a superimposition of the Constitutional criteria for defining (a) what constitutes a Human Right, (b) when has it been violated and (c) what are the appropriate remedies for its violation upon the ordinary legal criteria establishing: (a) the basis upon which liability for Tort arises in the Maltese system (imputability/faulty conduct and/or an unjust act or omission/causal linkage and damage) and (b) the remedies for such a violation. This internal mixing between public and private law within the Maltese mixed system has now brought about a situation where one can seek both a patrimonial remedy (characteristic of ordinary tort law) and compensation for moral damage (a characteristic remedy for violations of core fundamental human rights) through the same action.

In terms of horizontal application, that is (the application of human rights) between private citizens, classic constitutional theory can present certain difficulties when obtaining redress. Non-statal tortfeasors in dualist (as opposed to monist) jurisdictions often may plead procedural nullity in the case where certain heads of damage are not recognised by the ordinary law, in that the injured party does not have a direct right of action for the non-recognised heads of damage in private tort law against the tortfeasor. By roping in the State into the procedural equation and invoking its positive obligation to ensure safety and the corresponding judicial protection (Ubi jus ibi remedium) in all inherently dangerous activities, whether private or public, tort victims from different jurisdictions can obtain redress for an increasingly wider and more uniform range of heads of damage reflective of a

common understanding of human dignity and independently of whether such harm was caused by private or statal entities.

JULIETTE GALEA is a lawyer in Malta with offices in Valletta. She graduated as a Doctor of Laws (University of Malta) in October, 2005. In March 2006 she was admitted to the Bar (Superior) and went into private practice as a sole practitioner. Since then she has worked extensively in constitutional, civil and commercial areas of law and routinely deals with claims on behalf of the plaintiffs in tort claims, particularly asbestos injury claims with a trans-national dimension. In 2022 she completed a Pg.D. in European Law with King's College London (Dickson Poon School of Law). Dr Galea is an (International) member of APIL (Association of Personal Injury Lawyers - U.K), a member of PEOPIL (Pan European Organisation of Personal Injury Lawyers) and a member of the Chamber of Advocates (Malta). Her email address is: juliette_galea@fastmail.fm

PARALLEL SESSION: The Creativity of Jurists in Mixed Jurisdictions

Contractual Good Faith in Scots Law: The Way Forward?

David Cabrelli and Laura Macgregor

Scots law contains only a nascent, under-developed idea of contractual good faith. Despite TB Smith's assertion that a general concept exists, there has, until recently, been little evidence of its existence. The attempt by the House of Lords to 'resurrect' a general concept in Smith v. Bank of Scotland (1997 SC (HL) 111) has been subsequently applied only in the limited context of guarantees where borrower and cautioner are in a close relationship. More recently, the Inner House of the Court of Session has reasserted its existence without expanding on its source or nature (Van Oord UK Ltd v. Dragados UK Ltd (2021] CSIH 50). The position in Scotland can be contrasted with the position in England, where the case of Yam Seng PTE Ltd v. International Trade Corporation Limited ([2013] AIl ER(Comm) 1321) set the law on a new path. In a remarkable piece of judicial creativity, Lord Leggatt developed an implied term of good faith, potentially applicable where the contract qualifies as 'relational'. This development has led to an "avalanche" of claims (Bank of Scotland v. Hoskins[2021] EWHC 3038 (Ch), Mathews Jat para 30), most of which have been unsuccessful. To date, no Scottish court has had the opportunity to consider these English developments. We therefore stand at a crossroads, where we have the ability to determine whether to follow English law, or whether to develop a native Scottish idea. The aim of our project is, through comparative analysis, to chart a way forward for Scots law. The three authors, all established experts in their jurisdictions of Scots, Dutch, and American law, are conducting the project in two parts.

The first part involves a comparative analysis of the idea of contractual good faith in two common law systems: English law, and the law applicable in New York. This conceptual analysis focusses on the extent to which the content and application of good faith derives from public norms or the parties' mutual assent Key issues such as the parties' ability to exclude good faith, the route through which it is implied, and its meaning are therefore

considered. In this way, the developing English concept can be placed under scrutiny to assess its scope, practicability and suitability of a modern system of contract law. The second part assesses the solutions offered by Dutch law as a civil law jurisdiction and by the DCFR. If selected to participate in the Conference, the authors will present the outcome of the first part of the project. This comparative work will allow the authors to develop a way forward for Scots law, as a mixed jurisdiction, drawing from its component parts of the common law and the civil law. Whilst this ability to 'select' solutions is controversial (see J Du Plessis, (1998) 9 Stell LR 338 at 343), the 'crossroads' moment at which we stand, permits selection as a practical reality.

DAVID CABRELLI joined the School of Law in June 2007 having lectured at the University of Dundee for four years. Prior to being appointed a lecturer, David practised Commercial Law and Corporate Law for six years. David's teaching and research interests lie in the fields of Labour Law/Employment Law, Company Law, Commercial Law and Private Law. He has published papers in numerous academic and practitioner journals in the field of Labour/Employment Law, Corporate Law, Commercial Law and Private Law, together with a book on the Scots law of Commercial agreements and student textbooks on Employment Law (now in its fourth edition) and Scots commercial law.

LAURA MACGREGOR holds the Chair of Scots Law, her appointment to this Chair beginning on 1 July 2020. She is the first woman since the Chair's inception 297 years ago to hold the Chair. Before becoming an academic, Laura spent several years as a solicitor in practice with a major Scottish law firm in Edinburgh. She began her academic career as a lecturer at Glasgow Law School, joining Edinburgh Law School in 2002. She is a panel member of REF Sub-Panel 18. Furthermore, she is the author of the leading monograph, Agency Law in Scotland, (ISBN 9780414018051), published in the prestigious Scottish Universities Law Institute Series. Laura has edited a number of collaborative projects in the field of European private law

The Voice of Mixed Jurisdictions in the Comparative Law Discourse

Markus G. Puder

Literature has identified three characteristics for membership in the family of mixed jurisdictions, which has also come to be known as the third legal family. These characteristics include a duality of "building blocks of the legal edifice," a quantitative threshold and a psychological state of mind with respect to a distinctive bi jurality, and a structural separation of the traditions into their respective bins in private law and public law (Vernon V. Palmer, Mixed Jurisdictions Worldwide: The Third Legal Family 7-11 (Cambridge: Cambridge Univ. Press, 2001)). This presentation proposes a fourth characteristic - a uniquely nimble ability of mixed jurisdictions to advance the exogenous comparative dialogue. Mixed jurisdictions are comfortably conversant across the fences that have often demarcated legal families, schools, traditions and cultures. In support of this proposition, the presentation will offer case studies beyond the confluence of Romano-Germanic and Anglo-American legal materials, which have traditionally been the subject of scholarly endeavors. These case studies, which come from my own research agenda over the past year, will include forays into the realms of public international law and religious law operations.

MARKUS G. PUDER has taught At Loyola and published in the areas of International Law, Comparative Law, Civil Law, and Environmental Law. In addition to his service in foreign summer programs, he has recently represented Loyola in Austria, Columbia, India, France and Spain to explore inter-institutional collaborations. In the United States, he is a member of the New York State Bar and the U.S. Supreme Court Bar. His German multi-bar certification is recognized throughout the European Union.

The concept of the matrimonial "consortium totius vitae" in the Catholic Canon Code and the Maltese marriage legislation: a comparative analysis.

Mary Muscat

The Catholic Canon Code's teaching on the grounds of marriage annulment is the source of the definitions and concepts contained in Maltese Civil Code (Cap 16 of the Laws of Malta) and the Marriage Act (Cap 255). The 1983 Canonical amendments introduced the interpersonal perspective to the marriage contract, turning the bond to a "*consortium totius vitae*", or "partnership for life." This presentation looks into the Maltese Civil Code's 1993 amendments to the 'Mutual rights and duties of spouses' subtitle and the extent to which the concept of matrimonial reciprocity was affected. The grounds of marriage nullity in art. 19 of the Marriage Act will also be analysed.

MARY MUSCAT is a full-time resident academic with the Department of Civil Law, Faculty of Laws (University of Malta). She coordinates the Masters in Mediation and practices as a Child Advocate with the Family Court and the Juvenile Court. Before joining Laws, she was attached to the Department of Criminology at the Faculty of Social Wellbeing, lecturing in policing, after having served in the Malta Police force for thirteen years as an Inspector. She still trains Police Constable recruits in Criminal Law and in Contemporary Crime, and trains new Community Officers in Eco-Offences at the Academy for Disciplined Forces. Dr Muscat also lectures in Substantive Criminal Law in the Legal Procurator Higher Diploma. She is a PhD candidate in Matrimonial Canon Law with the Faculty of Theology.

PARALLEL SESSION:
Newly Recognized Mixed Jurisdictions

Goa: An Overlooked Mixed Jurisdiction

Adam Feibelman

This paper will explore the Indian state of Goa as a hitherto under-appreciated example of mixed jurisdiction. Located on the eastern coast of India south of modern-day Mumbai, it was an important hub in the medieval spice trade and became a colony of Portugal in 1510. It was the capital of Portugal's empire east of the Cape of Good Hope for many centuries. When India gained its independence from Great Britain in 1947, Goa remained a colony of Portugal, gaining its own independence in 1961. The Portuguese Civil Code of 1867 was extended to Goa and other Portuguese colonies in 1869. It survived the entry of Goa into the Indian Union in 1961. Since then it has been subject to various reforms, and some of its

provisions have been preempted by Indian national laws. In the meantime, Portugal's Civil Code has been modernized. It appears, for example, family law and tort law in Goa are still governed by the Goan Civil Code. Significantly, the family law provisions of the Goan Code cover all residents; the rest of India is governed by family laws that are religion-specific. There has been interesting debate over the years about whether Goan family law should be reformed to conform with the law elsewhere in India and whether the approach in the rest of India should be changed to the Goan approach.

The provisions of the Goan Civil Code Governing successions were reformed and "de-codified" with the Goa Succession, Special Notaries and Inventory Proceeding Act (enacted in 2016). It is not clear, however, to what extent the underlying substantive differences between the Code and succession law elsewhere in India were retained in the reforms of 2016. This paper will provide a dense if not exhaustive description of the degree of mixity in Goa's legal system and its relationship to the law of India. To my knowledge, no such project has been attempted. The existing studies and commentary of the relationship between the law of Goa and that of India have tended to focus on particular fields and areas; I do not know of any studies that aim to broadly characterize the overall relationship between these legal systems. This paper will also examine Goa's mixity in light of the scholarship on mixed jurisdictions. It will emphasize ways in which the example of Goa reinforces insights from that field of inquiry and ways in which it complicates the field.

ADAM FEIBELMAN's teaching and research focus on bankruptcy law, regulation of financial institutions, legal issues related to sovereign debt and international monetary law. His current work explores two topics: the relationship between corporate bankruptcy and financial regulation and theories of monetary sovereignty. His ongoing scholarly interests include India's new insolvency and bankruptcy system and the IMF's legal framework. He joined the Tulane faculty in 2009. Prior to that, he was a faculty member at the University of North Carolina School of Law and University of Cincinnati School of Law and taught as a Bigelow Fellow at the University of Chicago.

France's Pluralistic Experiment with Jewish Communities and Their Laws

Shael Herman

From the 13th century, the Jews' rejection of Christ as savior animated Frenchmen's unalloyed animus toward both Jews and Jewish law. In 1240, a papal disputation sponsored by the French crown concluded in destroying thousands of Hebrew texts including the Talmud, Judaism's central legal pillar. Despite wide Jewish expulsions over the centuries, Jews always returned to the realm, and eventually figured among the most significant Jewish communities in Europe. Malgre lui, France joined a pluralistic experiment with Jews because they were regulated by their own laws. Especially vibrant in 18th century Metz, the capital of Lorraine, the pluralistic experiment blossomed, though rabbis customarily counseled Jewish litigants to settle their differences in-house [i.e., the beit din of the kehillah] and steer clear of gentile courts [arkhaot shel goyim]. Akin to folkloric admonitions against washing one's laundry in public, the rabbis' advice was probably calculated to shield Jewish disputes from Christian rumor mongers and French officials. To consolidate hegemony over French Jews

by expanding competence over Jewish disputes. Eighteenth-century French officials ordered Jewish leaders of Metz to draft a compilation of Jewish laws. The Recueil, a compilation of rules akin to the customs that individually regulated provinces of the ancien regime, broadly tracked Joseph Caro's Hoshen Mishpat. This was a prominent tractate of procedure, monetary affairs, real and personal property, property, damages, and personal injuries. In 1743, the Alsatian parliament promptly registered the Recueil and circulated the manuscript among royal courts. French rulings attested to Jewish influences on a host of topics such as divorce grounds and decrees, levirate marriage, oath administration and contract formalities. Judicial references to the Recueil attested to its utility.3 Studies by Christian Hebraists and French Christian jurists, many of whom were churchmen, complemented the Recueil in enriching judicial knowledge of Jewish law. Legal pluralism perforce predated French Jews' emancipation, and declined in the 19th century. The success of the pluralistic experiment lies in the Jews' full integration as citizens, and an ancien régime phenomenon scarcely noted beyond a small circle of scholars.

SHAEL HERMAN is Professor Emeritus of Law at Tulane Law School in Louisiana. She specializes in Legal History and Comparative Law. Her research focused particularly on the Jewish-Christian-Muslim relations in the Middle Ages. Among her numerous publications are: The Louisiana Civil Code A European Legacy for the United States, Civil Recodification in an Anglophone Mixed Jurisdiction: A Bricoleur's Playbook in 58 Loyola Law Review, 487-558 and: Medieval Usury and the Commercialization of Feudal Bonds

Albanian Civil Code: A Mixture Between Tradition and Civil Codes - Models of the Civil Law Family

Juliana Latifi

The Albanian private law, and especially the Albanian Civil Code, constitutes a specific case in the Civil Law Family. This Code entered into force in 1994 and clearly shows traces of the former family of Socialist Law where the Albanian civil law has been part of for more than 45 years. The code is organized into 5 parts: Part one: General principles; Part Two: Things and Property; Part Three: Inheritance; Part Four: Obligations; and Part Five: Contracts; in the structure that respects the division of the pandectits system (as in the German Civil Code/BGB): General parts and special parts where the principles of the general part that regulates the institutes for: (i) the physical person, (in) the legal person, (iii) representation, (vi)prescription and decadence, and (v) legal action, find application in the special parts where this structure is the same as in the Civil Code of 1981 (abrogated). From the content point of view the Albanian Civil Code preserves a legacy of the previous legislation and especially in the legal provisions that regulate some institutes of the general part, such as: physical person; representation; prescription; and legal action; continuing this inheritance in the other two main institutes, that of ownership and inheritance, however, a considerable part of the provisions of the Code have been shaped by referring as a model to the Italian Civil Code, French Civil Code, and Dutch Civil Code.

This mix in the content of the provisions of the Civil Code has caused its application in

practice, and especially in the activity of the courts, to be accompanied by problems in the way that they have been interpreted, such as (i) Rei vindicatio is object to the deadlines of prescription; (ji) The registration of properties has an evidentiary character, or it has a declarative character, etc., said cases of which have been the object of the unifying decisions of the High Court of the Republic of Albania, where its decisions serve as a precedent for similar cases by the lower courts. Seen from this point of view, the Albanian Civil Code presents a mixture of its legal provisions where the traces of the former socialist law are combined with the provisions of the traditional Civil Codes of the Romano-German family - French Civil Code, and Italian Civil Code, but also with one of the most contemporary Codes, the Dutch Civil Code. This approach to the structure and content of the Albanian Civil Code, with what can be considered "inheritance, provesbest that an experience which has lasted for many decades cannot be erased immediately, while on the other hand, the need to responding to reality dictates the approach that its provisions are the object of the unification of judicial practice by the Hight Court, in coherence with the legislation of the Romano-German family.

Prof. Dr. JULIANA LATIFI is an Albanian Professor, Judge and Chair of Albania's Competition Authority. JulianaLatifi graduated in Law from the University of Tirana in 1991 and in 1997 she completed her doctorate at the same institution. From 2000 to 2002 she was completing post-doc work at the Robert Schuman University in Strasbourg. Prof. Dr Juliana Latifi was appointed by the government in 2016 to lead Albania's Competition Authority. She took over from Lindita Milo who had served her five-year term of office. Latifi was proposed for the role by 28 members of parliament.

KEYNOTE SPEECH:

From Six to Twenty Eight: Building Consensus between Different Traditions

The Honorable Ian Forrester KC

This speech explores how the judges sitting on the European Court of Justice based in Luxembourg have, over time -and in tandem with the growth of the European Union- developed their own sets of procedural and substantive principles. These principles are in turn rooted in the legal traditions of the 27 member states.

IAN FORRESTER is a former judge in the General Court of the Court of Justice of the European Union (CJEU). He served from 7 October 2015 to 31 January 2020. He studied at the University of Glasgow, Scotland, between 1962 and 1967 and graduated with a Master of Arts in History and English Literature and a Bachelor of Laws. Later, in 1969, he graduated with a Master of Comparative Law from Tulane University, Louisiana, New Orleans. Prior to being appointed to the General Court, he practiced as a barrister in Scotland (with Maclay, Murray & Spens), and New York (with Davis Polk & Wardwell) until 1972, following which he appeared before the Court of Justice of the European Union in Brussels and the European Court of Human Rights in Strasbourg.