


DIRITTO PRIVATO



AIM OF PRIVATE LAW

- Resolution of conflicts
- Prevention of conflicts

Private Law

- Traditionally includes relations between private persons
- Civil Law/Commercial Law
- Civil law applies when the parties are on the same level
- Public law applies when one of the parties has a supremacy on the other
- Growing relevance of private law
- Economic rights: things, contracts, obligations, damages
- Economic activities
- Family law
- Succession upon death

THE LEGAL RULE

- Legal rules prescribe a human conduct
- Are always general and abstract
- Their violation is generally sanctioned

The general and abstract legal rule must be applied to the single real case (fatti specie)

- It must be ascertained if the real case under judgement is the same provided for by the legal rule

SOURCES OF LAW AND INTERPRETATION

Sources of private law

- National law sources
- International law sources
- European Union law sources

Relationships among the sources

- Hierarchical principle
- Chronological principle
- Specialty principle
- Competence principle

National sources

- Constitution
- State law - primary sources
- Regulations - secondary sources
- Customs and usage

The Italian Constitution

- Premulgated 1947 become effective 1948
- General principles on the organization of the State
- Fundamental principles

- Freedom of association (art. 18)
- Right of equal treatment (art. 3/1)
- Right of property (art. 42)
- Freedom of private enterprise (art. 41)
- Family (artt. 29, 30 e 31)

The primary sources

- Leggi (L.) - Statutes
- Decreti legge (Decree-Laws - D.L) and
- Decreti legislative (Legislative Decrees - D. lgs) - Acts having the force of law
- Leggi Regionali (Regional laws)

The civil code

- Issued in 1942 (c.c. e c.c.)
- On the model of the French code Civil 1804
- "Preliminary provisions on the law in general"

6 << books >>:

- 1) Persons
- 2) Succession upon
- 3) Property
- 4) Obligations
- 5) Work
- 6) Protection of rights

Sectorial codes

- Sectorial legislation
- Consumers Code
- Insurance Code
- Privacy Code
- Tourism Code

Regulations

Regulations related to laws, made to implement them

Customs and usage

- Unwritten source of law

Material / objective element: they are general, repeated and constant patterns of behaviour

Psychological / subjective element: they are observed as if they are legal duties

International sources

International conventions

Private international law (National source regulating the relationship between national and foreign sources)

European Union Regulations

European Union Directives

Other sources (e.g. UE Treaty, EU Charter of fundamental Rights)

The interpretation of statutes

* Art. 12 preliminary provisions

- Literal
- Teleological (logical)
- Systematic
- Historical

* Restrictive / Extensive

- Authentic
- Judicial
- Administrative
- Doctrinal

Analogy, art 12/11 preliminary provisions, when there is a gap in the provisions

Analogie legis, similar cases or akin matters

Analogie iuris, when the general principles of the system are applied

Analogy is forbidden for criminal cases, special or exceptional provisions

General principles

Provide broad and elastic provisions

E.g. Good Faith, Public Morals, Public Order, Fairness

They are linked to the actual context

Legal formats

- Rodolfo Sacco and others. Trento Theses
- The formats are the factors that form a legal system
- Legislation
- Judicial decisions
- Scholarly writings
- Interpretation of practicing lawyers
- Others: ideology, religion, <<declamatory>> statements
- <<cryptotypes>> (e.g. mentality of legal practitioners)
- These different formats compete to provide a solution
- This solution can sometimes be inconsistent with the theoretical statements of the system
- This solution is often the consequence of a selection of one of the possible solutions
- Some formats can prevail in some fields of law (e.g. judicial decisions in tort law)
- Rules created by a format can be transplanted in a different legal system

RIGHTS, INTERESTS, LEGAL RELATIONS

Legal relations

- Relationship between two or more subjects, or relations with things.
- Active side (rights, power, licences, expectations)
- Passive side (duties, obligations, subjections, burdens)

The subjective right

Is the power conferred by the law to a certain subject to freely act, in a certain domain (e.g. property)

Born as a universal and unconditional right, it is now thought that it could be limited in the interest of other subjects or public interests

- Relative rights: toward some subjects
- Absolute rights: toward every other subject
- Property rights (diritto reale): on tangible things, against anyone
- Choses in action, or credit rights or obligations: against specific obligors

- Patrimonial rights
- Personality rights
- Disposable rights
- Non-Disposable rights

The abuse of a right

- Created by judges and doctrine
- The legal action to fulfil the legitimate right would create an unjustified damage to a third party or the general interests, because of circumstances, purposes or results

Other subjective situations

- Power and licences: rights to modify the legal situation of another subject (e.g. withdrawal from contract or association)
- Legal expectation: future prospects or entitlement to unvested rights (rights that are not guaranteed, e.g. an inheritance)
- **Authority**: power to act in somebody else interest (e.g. child)
- **Status**: set of active and passive legal situations of a subject
- **Duty**: prohibition to harm a subjective right of another subject, in cases of absolute rights
- **Obligation**: prohibition to harm a subjective right of another subject, in cases of relative rights
- **Subjection**: situation of the person submitted to the power of another subject
- **Liability**: situation of the person which

Committed an illicit act and must compensate the injury caused

- **Legitimate interest**: situation of the private subject toward the power of the public administration

- **Collective interests**: belonging to a certain group of subjects

- **Diffuse interests**: belonging to the general community

Legal facts and acts

Fact: any event

Act: event caused by man

Patrimonial acts

Non patrimonial acts

Acts in return for payment (atti onerosi)

Acts free of charge (atti gratuiti)

Acts among living subjects

Acts made for the event of the death of a subject

Unilateral act

Bilateral acts

Multilateral acts

Collective acts

- **Valid acts**: they have all the requisite required by the law and elements
- **Invalid acts**: they do not have all the requisite required by the law or elements
- **Licit acts**: according to the law
- **Illicit acts**: contrary to the law

Acquisition of rights

Originating title: title constituted autonomously by the possessor

Derived title: title obtained from an existing previous title-holder

Free of charge
In return for payment

Between living subjects
Following the death of the title-holder
Universal title
Particular title

Loss of rights

Transfer of the rights (free or compulsory)

Limitation period, statute barred
(prescrizione)

Art. 2934 c.c.: when the person entitled to the rights does not exercise them within a period determined by law

Loss of rights

- The limitation period starts in the moment in which the subject holder of the right starts not using it
- Limitation times are different depending from the case (from 20 years to a few months)
- Suspension of the limitation period, because of relationship between the parties, or subjective conditions of the right holder
- Interruption of the limitation period because of interruptive acts of the right holder or the other party
- Lapse of the right (art. 2964)
The right is not exercised within the prescribed time limit

NATURAL PERSONS

- Natural persons are the individuals
- Legal persons are the collective entities (associations, foundations and companies)
- They are all "legal subjects"

Legal capacity

- **Legal capacity** (capacità giuridica): eligibility to have rights and duties
- **Capacity to exercise rights** (capacità di agire): capacity to perform legal acts concerning his own rights
- Both can be sometimes limited

Acquisition of legal capacity

- Natural persons acquire the legal capacity at the moment of birth (art. 1/1 c.c.)
- The child must be alive and capable of breathing at the moment of birth
- Unborn child, already conceived, can also have some rights (art. 1/11 c.c.) (e.g. will)

Personality rights and civil freedoms

- Right to name and surname (art. 9 c.c.)
- Right to physical integrity (art. 32 Cost. and 5 c.c.)
- Right to free movement
- Right to religious freedom, free speech, free political ideas (arts. 19, 21, 22 Cost.)
- Right to honour
- Right to personal truth
- Right to privacy (Privacy code)
- General Data Protection Regulation
- All the data processed in Europe or

by companies or entities with branch established in the EU, companies offering goods or services or monitoring the behaviour of individuals in EU

Residence, domicile, abode

- **Residence**: the place where the person has his regular abode, normally leads his life (art. 43/1 e.e)

- **Domicile**: the place where the person takes care of his affairs and interests (art. 43/1 e.e)

- **abode**: where the person could currently be found

Capacity to exercise rights

- Capacity to perform valid legal acts and transactions (capacità di agire)

- Is acquired with legal majority, at 18 years old (art. 2 e.e)

When the person is unable to take care of his interests, we speak of incapacity to exercise rights or perform acts (incapacità di agire)

Incapacity to exercise rights

* We can distinguish in:

- Legal
- Judicial
- Natural

* With references to its consequences, we talk about:

- Relative incapacity
- Absolute incapacity

Legal incapacity to exercise acts

- Minor age (art. 2 c.c.)
- Emancipated minors: 16 years old, following their marriage or under other special circumstances (e.g. exercise of a business enterprise) (art. 390 c.c.)

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