EUROASIA VISION 2022

SIXTH SPANISH-FILIPINO SCIENTIFIC CONGRESS

MODERNIZING CRIMINAL LAW AND PRIVATE LAW

MANILA, PHILIPPINES | 10 - 11 JUNE 2022

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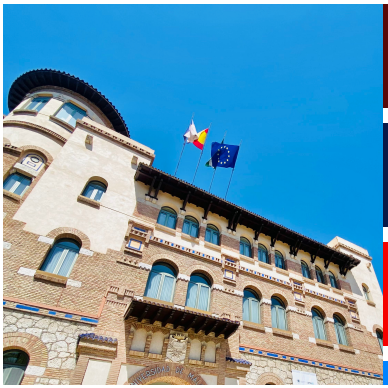

CALESA PROGRAM

The Erasmus+ Programme is the funding facility of the European Union to support the education, training, youth, and sports programs in Europe. One of the key focuses identified by the Erasmus+ Programme, through the European Commission, is the strengthening of the international cooperation of the European countries across the regions including Asia.

The CALESA Program (Capacity Building for Legal and Social Advancement in the Philippines) is an initiative funded by and developed under the Erasmus+ Programme. The CALESA program expects to enhance cooperation in Asia through knowledge sharing, capacity-building activities, and academic collaboration between educational institutions in Europe and the Philippines.

Co-funded by the
Erasmus+ Programme
of the European Union

"For three months, we, my dear friend Solomon Lumba and I, worked together and asked the European Union through the Erasmus+ Programme to fund the facility.

I know from the seeds we planted, that now is the moment to start experiencing the fruit. The cultivation is very incredible, fast, and so thrilling. Really! it's a dream, the conclusion is this dream is now a reality!"

José Manuel de Torres Perea
Profesor Titular, Derecho Civil
Universidad de Málaga

THE CONGRESS

This international Congress is aimed at enhancing the research capacity of Philippine law schools and addressing the following concerns in scholarly advancement vis-à-vis policy formulation: academic expertise and research output; modernization of legal codes; human rights awareness and regard for the rule of law; and interest and skill in foreign languages as it impacts cross border legal education and mobility.

Papers on the modernization of criminal law and private law will be delivered at the Congress. Their aggregate content, perspective, applicability, and relevance, as amplified in the discussions and deliberations, will heighten awareness, and encourage a call to action on the concerns mentioned above.

This Congress is the sixth of a series of Congresses that the CALESA has seen.

CONGRESS ORGANIZERS

The University of the Philippines (UP) is the country's national university. This premier institution of higher learning was established in 1908 and is now a university system composed of eight constituent universities located in 17 campuses all over the archipelago. A UP education seeks to produce graduates imbued with an abiding sense of responsibility to their people and nation, the skills and mindsets to improve human life, and a commitment to the freedom and welfare of all.

Danilo L. Concecion
President, UP System

Fidel R. Nemenzo
Chancellor, UP Diliman

UP, as one of the Philippine partner institutions of the CALESA Program, collaborated with other institutions on component projects and events with the aim of capacity-building and curriculum building through permanent and ad hoc committees. Last year, the University organized a seminar on the Bologna process, and this year, co-organized two more activities: (1) Global History and the Construction of Global Citizenship, and (2) Sixth Spanish-Filipino International Scientific Congress on Modernizing Criminal Law and Private Law.

> *I believe all of us involved have deepened our friendships and strengthened our formal ties as we cooperate with each other to achieve a common goal.*

Edgardo Carlo L. Vistan II
Dean, College of Law
University of the Philippines

CONGRESS ORGANIZERS

The University of Málaga is highly committed to making scientific development and innovation, the grounds on which social progress rests. The efforts made to promote mobility and attract international talent have stood out in recent years, resulting in an open and cosmopolitan university involved in top-level research projects. Innovation, dynamism, and internationalization are the principles on which UMA's history is based, as well as its basis to overcome current difficulties and reinforce its duty to knowledge, society, and the future.

Juan José Hinojosa Torralvo
Decano, Facultad de Derecho
Universidad de Malaga

The CALESA Program was borne of the curiosity of Professor de Torres Perea to learn more about the civil law of other countries that were at one time under the influence of Spanish rule. As the collaboration between Spanish and Filipino professors developed, the University of Malaga formulated a proposal for the Erasmus+ Programme to establish the CALESA Program. From a convergence of professors grew a community of Spanish and Filipino educators with a common desire to create opportunities in enhancing curricular offerings of the partner institutions.

PHILIPPINE PARTNER INSTITUTIONS

Philippine Judicial Academy

The Philippine Judicial Academy is a training school for justices, judges, court personnel, lawyers, and aspirants to judicial posts. As a separate but component unit of the Supreme Court, it has become an all-important factor in the promotion of judicial education in the Philippines. It receives full patronage and support from the Court which guarantees the participation of judges and court personnel in its programs and activities.

The current Chancellor of the PHILJA is recently retired Supreme Court Associate Justice Rosemari Carandang.

University of San Agustin

The University of San Agustin is an Augustinian, Catholic, and Filipino educational institution that aims to form the members of its academic community in Virtus et Scientia to serve Western Visayas, the Philippines, and the world. It envisions itself as a premier academic community of life-long learners working with one mind and one heart to search, discover, and share the Truth for the promotion of authentic human and societal development.

CALESA bridges our historic colonial past and the present state of the Philippine-Spanish relations in a creative and unique way, through the medium of education. I envision a rediscovery of each other's potential in contributing towards a wholistic approach to human development in an environment of respect for one another."

Sedfrey M. Candelaria
Director, Research and Linkages Office, PHILJA
Former Dean, Ateneo de Manila University

While Calesa is admittedly not the first collaboration between our peoples, it is unique. Timely, as well as timeless.

Calesa is a vehicle that enables us to celebrate our commonalities and bridge our differences. Its present form and composition is no doubt just the beginning, as it is already attracting the attention and interest of a growing number of other institutions.

Thru Calesa, we are rediscovering our shared legal histories. Thru Calesa, we are engaging in continuing and meaningful dialogues about our interconnections and about our common interests to promote, propagate, and protect the Rule of Law in the present and for the future.

Jose Mari U. Tirol
Dean, College of Law
University of San Agustin

It is my earnest hope and expectation that each one who is here today will ultimately reap much fruit from the seeds of knowledge, that will be scattered and sown amongst us in these next two days.

Jose Maria G. Hofileña
Dean, Ateneo Law School
Ateneo de Manila University

The CALESA program has been a blessing to our legal community and to our legal education. It allows us to revisit our cultural and historical backgrounds and compare them from an international perspective as to the practice of law and language.

Mary Anne S. Alba
Director, Ateneo Center for Legal Services
Ateneo de Zamboanga University

Ateneo De Manila University

In the spirit of being Lux in Domino, Light in the Lord, Ateneo de Manila University envisions itself as a force for good in seeking innovative and sustainable solutions to society's most pressing challenges. Rooted in its Filipino, Catholic, and Jesuit values, Ateneo is a collaborative and engaged leader in the work of social transformation through education, formation, research, and social engagement.

Ateneo De Zamboanga University

The Ateneo de Zamboanga is committed to the mission of educating and forming students to be leaders who will work for social transformation based on Filipino, Catholic, and Jesuit values, culture and tradition, and who will dedicate themselves in the service of God and country, pro Deo et patria.

EUROPEAN PARTNER INSTITUTIONS

Universidad de Deusto

The University of Deusto was founded in 1886 by the Society of Jesus. With campuses in Bilbao and San Sebastian and branches in Vitoria and Madrid, its hallmarks are education in skills and values, thanks to its own socially recognized teaching model. It is also characterized by its specialist research, and its commitment to justice and international outreach. The University of Deusto aims to serve society through a specifically university-based contribution based on a Christian vision of reality.

Law Dean Gema Tómas Martínez of the University of Deusto, 4th from the left.

UCD Dublin

UCD is one of Europe's leading research-intensive universities; an environment where undergraduate education, masters and PhD training, research, innovation and community engagement form a dynamic spectrum of activity.

Since its foundation, the University has made a unique contribution to the creation of modern Ireland, based on successful engagement with Irish society on every level and across every sphere of activity. The international standing of UCD has grown in recent years; it is currently ranked within the top 1% of higher education institutions world-wide.

As Ireland's largest university, with its great strength and diversity of disciplines, UCD embraces its role to contribute to the flourishing of Ireland through the study of people, society, business, economy, culture, languages and the creative arts, as well as through research and innovation.

> *The Sutherland School, as a common law School of Law in the EU is committed to the transformative potential of law for society and welcomes this new initiative.*

Imelda Maher
Dean, UCD Sutherland School of Law
UCD Dublin

Co-funded by the
Erasmus+ Programme
of the European Union

Innovation, internationalization, pluridisciplinarity and focus on the global challenges of the 21st century are the mottos of all our degree courses... We have always been aware of how the law is ever more global.

Mariana França Gouveia
Dean, School of Law
Universidade NOVA de Lisboa

Universidade NOVA de Lisboa

Universidade NOVA de Lisboa was founded on the 11th of August 1973, and is the youngest of Lisbon's three state Universities. Integrated within a framework of expansion and diversification of higher education, the University adopted a new model within the Portuguese system that stressed interdisciplinary approaches, technological developments while, at the same time, safeguarding offerings in traditional academic domains including medicine, sciences and humanities.

PROGRAM SUMMARY

10 June

AM

Welcome messages
Keynote address
First Plenary Session
Breakout Session # 1
Breakout Session # 2

PM

Second Plenary Session
Breakout Session # 3
Breakout Session # 4
Closing Session

11 June

AM

Opening Message
First Plenary Session
Breakout Session # 1
Breakout Session # 2
Second Plenary Session

PM

Continuation of Second Plenary Session
Breakout Session # 3
Third Plenary Session
Closing Session

12 June

Excursion/ City Tour

For full details and final program flow, please refer to the Program found in your Congress kit and on the electronic monitors in the venue.

"The Constitution is not just an ordinary legal document. It frames our legal order. The changes in its phraseology reflect the historical adjustments of the values of the sovereign. While admittedly, large portions of the document are consistent with our colonial history, many of the words have already been interpreted in the light of our own indigenous wisdom. Likewise, many of the fundamental rights of individuals, groups, and identities find resonance with normative formulations in the international sphere, which provide this Court with persuasive guidance."

Justice Marvic M.V.F. Leonen
Senior Associate Justice
Supreme Court of the Philippines

Marvic M.V.F. Leonen is currently the Senior Associate Justice of the Supreme Court of the Philippines. He served as the UP System's first Vice President for Legal Affairs in 2005, and was the Dean of the U.P. College of Law from 2008 to 2011. He obtained his AB Economics degree, *magna cum laude*, in 1983, and his Bachelor of Laws degree in 1987, both from UP. Early in his law career, Justice Leonen cofounded the Legal Rights and Natural Resources Center, Inc., a legal and policy research and advocacy institution that provided legal services for upland rural poor and indigenous people's communities. Justice Leonen is widely acknowledged for his environmental activism and community organizing.

In July 2010, He was named by Philippine President Benigno Aquino III as the Philippine government's chief negotiator in the talks with the Moro Islamic Liberation Front. He successfully led the parties into a framework agreement on the Bangsamoro which was signed on October 15, 2012. He was appointed to the Court on November 21, 2012.

In his dissenting opinion in the controversial case of *Republic of the Philippines vs. Maria Lourdes P.A. Sereno* (G.R. No. 237428, May 11, 2018), Justice Leonen had occasion to describe the country's constitution as reflective of our colonial past but which must now be understood in light of globally changing times.

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MODERNIZING CRIMINAL LAW

José Luis Díez Ripollés
UNIVERSITY OF MALAGA

Recent trends in Spanish criminal law

After a brief description of the different reforms of the 1848 Spanish Penal Code, a code which is at the origin of the current Philippines Penal Code, we will focus on the novelties brought about by the completely new 1995 Spanish Penal Code and its later reforms till 2022.

We will proceed to an overview of the contents of the three pillars of criminal law, legal assets protected, system of liability, and system of sanctions, as they are reflected in the new penal code, and the penal ideology behind them.

Then, we will follow the numerous changes and modifications that this brand-new penal code surprisingly experiences from the beginning, starting in 1998. We will try to understand all these changes in accordance with recent trends on contemporary criminal justice policy.

REACTOR:

Atty. Theodore O. Te
Teaches criminal law and criminal procedure in UP College of Law
Bar examiner in criminal law and remedial law
Human rights lawyer, Free Legal Assistance Group (FLAG)
Director, Clinical Legal Education Program UP College of Law

José Becerra Muñoz
UNIVERSITY OF MALAGA

The law-making process: A crucial aspect of criminal policy

Traditional approaches in Criminal Policy studies do not consider the Criminal Law-Making process as a key element. However, the careful analysis of how criminal legislation is designed, implemented and evaluated is crucial to understand why Criminal Policy is the way it is. Through the study of its many components, a new notion of the law making process emerges, one that includes many actions that take place before and after the bill is dealt with in the Parliament and in which some actors seem to have the ability to control every decision that has to be made.

In this paper, I will explain the main parts of the Criminal Law-Making process as they have been conceptualized in the most recent literature and I will discuss some of the key elements that are able to influence the quality of the legislation that is finally applied in the Criminal Justice System.

REACTOR:

Prof. Filomin C. Gutierrez
Teaches sociology in UP Diliman
Specializes in crime, delinquency, history of Philippine criminology, prison gangs, fraternities, masculinity, and violence

Demelsa Benito Sanchez
University of Deusto

Alternative penalties to imprisonment in the Spanish criminal law

This paper aims to explain the alternative penalties to imprisonment in the Spanish Criminal Law, with the purpose to compare the Spanish system with the Philippines one. The starting point is the Spanish Constitution, according to which, penalties consisting of deprivation of liberty must be oriented to the resocialization and re-education of the convicted person. This mandate of the Constitution is difficult to achieve in practice, specially, if the imprisonment is too long or too short. This paper will focus on the latter. As the existing research shows, penalties consisting on short periods of deprivation of liberty may have the contrary effect to resocialisation: desocialisation. There are several reasons to explain that. For example, perhaps there is not enough time to follow a proper resocialization program, the person is exposed to the criminogenic atmosphere of the prison, and the person may lose his job, family, and friends. With the aim to avoid the negative impact of short deprivation of liberty, the Spanish Criminal Code includes a system of alternatives penalties such as the fine and the community service. Likewise, it is possible to suspend the execution of a short penalty of imprisonment, if some requirements are fulfilled. The benefits of this system will be addressed in this paper.

Reactor
Atty. Rommel A. Abitria
Teaches criminal law, special penal laws and jail decongestion, and juvenile justice and juvenile delinquency
Executive Director, Humanitarian Legal Assistance Foundation, Inc.

Ana Isabel Cerezo Domínguez
University of Málaga

Women in Spanish prisons

This paper aims to take a close look at the reality of female crime in Spain. On the one hand, we analyze the singularities of this type of crime, which has, as with other neighbouring countries, experienced a significant increase in recent years. However, the low rates of female crime compared to those of men has made this phenomenon all but invisible, with the consequence that research into clarifying the criminological and social profile of these women is scarce. The search for the causes of female crime inexorably leads to the phenomenon of female impoverishment: most women commit crimes for social reasons. On the other hand, we will focus on describing the current situation of women incarcerated in our prisons, an especially vulnerable group given their peculiarities and necessities. Women in Spanish prisons represent just 8% of the total prison population, although over the past 30 years there has been a considerable increase in the female prison population. As such, Spain occupies the first place in Europe in the rate of incarcerated women. However, over the past 3 years, a slow decline in this figure has been witnessed due to certain prison policies aimed at reducing, not specifically the ratio of female prisoners within the system, but the general prison population overall. Prisons reproduce and even exacerbate inequalities between men and women. Although the standard policy is that of equal treatment, in Spanish prisons incarcerated women has always occupied a secondary position due to their inferior numbers and low rate of conflict. This has led to the historical perpetuation of a series of discriminatory factors: precarious spaces, worse living conditions, the remoteness from their home environment, mixed profiling of inmates etc. Imprisoned women experience the accumulated disadvantages of class, gender and often ethnicity or nationality.

Reactor
Prof. Hannah C. Nario-Lopez
Teaches sociology in UP Diliman
Specializes in qualitative research in prison sociology

Bases of the juvenile criminal responsibility system: Comparison between Spain and the Philippines

Marta Fernández Cabrera
University of Málaga

Since the end of the 19th century and the beginning of the 20th century, countries have created specific justice systems for minors who commit crimes. This penal system has always been notably different from the existing system for adults. However, the fact that accused are especially vulnerable and the peculiarities of the criminal responsibility system for minors have often led to the violation of precisely their fundamental rights. The aim of this presentation is to show which model of juvenile justice the Spanish legislator has chosen after the promulgation of the Constitution of 1978. During my presentation, I will explain the principles and basic features of this system. The Spanish legislation will be briefly compared with the children in conflict with the law system applicable in the Philippines. This is an interesting work of comparative law because, despite the fact that the same international agreements are in force in both countries, the systems chosen by each of them are very different.

Reactor
Atty. Glenda T. Litong
Teaches criminal law in UP College of Law
Law Reform Specialist, UP Institute of Human Rights
Former Commissioner, Human Rights Victims' Claim Board

Compared analysis on sex crimes against especially vulnerable persons

Deborah García Magna
University of Málaga

The current Spanish Criminal Code (arts. 178 to 194) includes the following offences against sexual freedom and sexual indemnity: sexual assault and abuse of persons over 16 years old; sexual crimes committed against minors under 16 years old; sexual harassment; exhibitionism and sexual provocation against minors and people with disabilities; conducts related to prostitution; and corruption of minors. Most of them refer to conducts in which the perpetrator involves the victim in a non-consented sexual behavior. Thus, the main legal asset in sex crimes is the sexual freedom, but when it comes to minors and disabled persons, the object of protection is the sexual indemnity, since it is presumed that these especially vulnerable persons do not have the capacity to consent in some cases. In addition to sex crimes themselves, their connection with other crimes such as human trafficking for the purpose of sexual exploitation and child pornography trafficking is particularly relevant.

The paper that I will present at the Sixth Spanish-Filipino Scientific Congress, will include a brief compared description of the main sex crimes in the Spanish and the Filipino Criminal Codes. I will also pay specific attention to the legal protection regarding especially vulnerable persons. To this regard, I will focus in last reforms of Spanish criminal law.

Reactor
Atty. Dan P. Calica
Bar reviewer in criminal law
Faculty of Criminal Law Cluster, UP College of Law
Member, Code of Crimes Committee, UP Law Center

María Soledad Gil Nobajas
University of Deusto

Possession of drugs for self-consumption under Spanish criminal law: Judicial criteria for its impunity

Drug-related crimes under Spanish Criminal Law reflect a highly repressive Criminal Policy that, in a general approach, punishes any contribution to the illicit drug trade. Article 368.1 of the Spanish Criminal Code punishes "those who carry out acts of cultivation, preparation or trafficking, or who otherwise favour or facilitate the unlawful consumption of toxic drugs, narcotics or psychotropic substances, or who possess them for those purposes". From the legal text it is clear that the acts described in art. 368.1 are punishable when the person who carries them out has the intention of trafficking. Consequently, drug possession will only be punishable if it is for the purpose of trafficking, that is, to promote, favour or facilitate unlawful consumption, but not when the possession is exclusively for self-consumption. This raises the problem of establishing the frontier between possession for self-consumption, which is unpunished, and possession for trafficking. Given the silence of Spanish Criminal Code to resolve this issue, the Spanish Supreme Court has established a consolidated jurisprudence on the criteria that must be considered for the judges to assess whether drug possession is intended for trafficking. The purpose of this paper is to outline these judicial criteria, which are systematized in relation to the drug, the consumer and the seizure of the drug.

Reactor
Prof. Niel S. Borja
Teaches criminal law in UP College of Law
Criminal law litigation lawyer

Ana María Prieto del Pino
University of Málaga

Combating organised crime in the Philippines and Spain

Organised crime has gone transnational and global. However, despite the success and popularity, both in the academy and in the media, of the term 'organised crime' and the plethora of national and international initiatives designed to combat it, further domestic and international research on the topic continues to be extremely necessary. Additionally, comparative analysis, which is particularly valuable in order to gain knowledge, develop effective strategies and establish best practices to fight against organised crime, has so far been very limited.

This presentation aims to do its bit by providing a comparative view of organised crime in the Philippines and Spain based on the Global Organised Crime Index, an innovative tool designed and developed within the framework of The Educational Network for Active Civic Transformation (ENACT) with the purpose of measuring levels of organized crime in a country and assessing their resilience to organised-criminal activity.

Reactor
Police Major General Alessandro C. Abella
Area Police Command
Philippine National Police Northern Luzon

"Corporate criminal": An old new story

Athina Sachoulidou
NOVA School of Law, Lisbon

This paper provides an insight into the accountability of corporations as non-human actors for wrongful conduct typified as a crime. To this end, it first presents the multi-layered relation between corporations and criminal law: corporation as a victim; corporation as a criminal tool; corporation as a criminal structure; corporation as a "criminal". Subsequently, it examines the EU framework of corporate liability ex crimine in terms of a set of rules that progress alongside the evolution of EU competence in criminal matters – using the PIF Directive as an example. Next, it presents (representative) solutions adopted at national level in EU countries, whether pertaining to criminal law stricto sensu or to administrative-criminal law, in order to hold corporations accountable for criminal acts. Finally, it re-assesses the long-lasting debate on the suitability of criminal law to address the so-called corporate crime. In this context, new chapters of corporate liability are explored with a special focus on human rights violations and international crimes.

Reactor
Prof. Teresita J. Herbosa
Teaches corporation law in UP College of Law
Former Chairperson, Securities and Exchange Commission
Responsible for conceptualizing, drafting, and formulating the New Corporation Code

Terrorism prevention and counter-terrorism policies: A global effort in the 21st century

Elena Avilés Hernández
University of Málaga

Terrorism is not a new phenomenon. However, despite its long history, its regulation has not been exempt from problematic issues. Starting with the lack of an agreed definition as the basis for regulatory development and continuing with the numerous reforms both in Spain and globally in an effort to adapt to a constantly mutable reality. During previous decades, such regulation has been approached from a reactive perspective, with an intensification of punitivism, especially since the Twin Towers and Pentagon attacks in 2001. However, it has already been shown that the advance of punitive barriers is not only ineffective, but even counterproductive. This has led to a shift in the current criminal policy trend towards prevention as a means of combating this phenomenon. However, sometimes this approach does not coincide with criminal law reforms. Hence, the imperative need for a comprehensive review of the response to find the most effective way to address the current threat.

Reactor
Dir. Francis Tom F. Temprosa
Director, Human Rights Education and Promotion Office,
Commission on Human Rights
Adjunct Professor of human rights law and philosophy of law in Ateneo Law School

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MODERNIZING PRIVATE LAW

Eugenio Olmedo Peralta
UNIVERSITY OF MALAGA

Regulating digital markets to foster competition and innovation: A vision from the EU to the ASEAN

In the late decades, the activity of digital platforms has expanded to virtually every market of products and services. In many cases, these digital markets operators have gained such a strong market power that their position in the market has become practically uncontestable. In fact, they have assumed the role of authentic regulators of the market or gatekeepers, using the words of the most recent regulations. The so-called GAFAM (Google, Amazon, Meta, Apple and Microsoft) are probably the most evident examples of gatekeepers.

In the regulation of the competitive behavior of digital platforms we must stablish different categories considering their dimension, market power and the existence of barriers to entry for new platforms.

Thus, even when not every digital platform is allowed to get such a strong market power as the GAFAM do, most of them enter into some anticompetitive practices in their commercial activities with the aim to strengthen their market power, prevent the entrance of new providers for the same goods or services and, finally, to distort and limit competition. Among these practices we may consider the use of parity clauses, the self-preferencing of the own products or services, price or products discrimination, the combination and abusive exploitation of data, bundling and tying practices and other kinds of anticompetitive market foreclosure that directly or indirectly favors the position of the platform in the market.

REACTOR:

Prof. Jose Jesus M. Disini Jr.
Teaches commercial law, civil law, advanced topics in commercial law, and advanced issues in intellectual property and cyberspace law in UP College of Law
Principal drafter, Implementing Rules & Regulations for the E-Commerce Act

José Manuel de Torres Perea
UNIVERSITY OF MALAGA

The recent reform on the capacity of disabled persons in the Spanish civil code

Law 8/2021, enacted on June 2, has brought about the reform of civil and procedural legislation in relation to supporting persons with disabilities in the exercise of their legal capacity. The purpose of the introduction of this act is to adopt Spanish regulations to the principles concerning a person's capacity as proclaimed by the 2006 United Nations Convention signed in New York. Article 12 of the Convention states that "2.States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. 3. State Parties take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity." We can therefore understand that the effort made to adopt this article to Spanish law has been titanic.

This reform, principally in the Civil Code, implies a real "regulatory cyclone." The amendment affects a large number of precepts, and introduces an important change in the conception of the institutions it deals with. The doctrine considers it to be a true Copernican revolution. In fact, the reform forces us to break stereotypes and discard consolidated models.

The preamble to Law 8/2021 states that the new legislation marks the transition from a system in which substitution predominated in decision-making affecting people with disabilities to one based on respect for the will and preferences of people. In fact, from now on, as a general rule, the disabled person shall be in charge of making his or her own decisions. Furthermore, the law stipulates that only in situations where support cannot be provided in any other way, and only in a situation of impossibility may decision-making by representation be used as an exception. Therefore, this legislative reform, far from merely introducing a terminological change, implies the adoption of a new perception of the reality in relation to persons with disabilities and the possibility of their representation.

José Antonio Castillo Parrilla
UNIVERSITY OF GRANADA

Challenges on civil liability arising from the use of artificial intelligence

Last 30 June 2021, the European Commission presented an Inception Impact Assessment to inform citizens and stakeholders of the Commission's plans for the necessary adaptation of the European regulatory framework for product liability and insurance, taking into account the transition to a digital and circular economy, and addressing the challenges posed by artificial intelligence.

The debate remains open to this day. In this paper, we will develop some of the main challenges that have been put on the table in relation to civil liability arising from the use of artificial intelligence, grouped into five challenges, taking into account those identified by the Commission in the public consultation process, the discussion of which is still ongoing:

1. Artificial Intelligence as a digital good and the problems of its tangibility
2. Compensation for damage resulting from cyber vulnerabilities
3. The circular economy as a challenge
4. Compulsory insurance and its objective extensión
5. The evolution of AI systems and the difficulties it poses for attributing civil liability to the producer

Enrique Sanjuán y Muñoz
Court of Appeal of Málaga

Private antitrust damages claims. EU directive 2014/104 on damages

Protection of free competition is crucial to ensure consumer welfare and market health. The manner in which this is done may vary from country to country, either using a regime of government agencies alone (independent or not) or in conjunction with an accompanying or reviewing system of jurisdictional protection. But monitoring or supervising does not guarantee, following the discovery of anti-competitive behaviour, that a deterrent sanction can be sufficient for a number of reasons. In order to understand it, it may be interesting to turn to the economic theory of competition law, which focuses in different ways on the market (Structuralist school, Chicago School emerged, Harvard School, Neo-Chicago School, Behaviouralist theories or Hipster Antitrust movement theory). From all these schools therefore the tort law that can be constructed starts from affecting the market and consumers, according to the trends, and therefore considering that any conduct will affect the market, and this will affect the chain up or down the market possibly injuring direct or indirect suppliers or buyers and even third parties who have nothing to do with the offenders but who would be injured precisely because of the extra-contractuality of the conduct. That this is so, therefore, will entail the need not only to protect the market itself and make it competitive again (and obviously discourage those who intend to engage in such conduct) but also to repair the damage caused, for which all infringers must be liable, whether they act in a unilateral conduct for abuse of a dominant position or in a uniform conduct as a single company (undertaking) in the case of cartelised actions. However, as it is clear that this liability is due to damage that is related (caused) to a conduct and that it must be quantified, the problem of the distribution of this liability and the proof of this damage and its quantification are transcendental elements in this new law of damages that, in order to facilitate reparation and dissuade conduct, has special features that focus on considering the possibility of early reparation or the assumption of this voluntary liability, as a favourable element as an exonerating or extenuating circumstance. The purpose of the Damages Directive, the actions arising from it before the courts and which may be brought by individuals who have suffered damage as a result, the method of calculation and the burden of proof are the subject of my presentation.

Reactor
Atty. Gwen B. Grecia- de Vera
Teaches commercial law and political law in UP College of Law
Bar examiner in political law
Program Director, Competition Law and Policy Program, UP Law Center
Former Executive Director, Philippine Competition Commission

Carmen de Vivero de Porras
University of Málaga

Second chance mechanisms in insolvency law

Traditionally, the procedures for dealing with over-indebtedness have their origin in Anglo-Saxon countries, which are much more pragmatic when it comes to dealing with situations of distress and the dysfunctions of citizens who cannot pay their debts. In contrast, countries with a Latin tradition have always been more reluctant to allow debt restructuring mechanisms for individuals. The European Economic and Social Committee already said in 2014 that over-indebtedness could not be considered as an individual problem of each individual, but was now a reflection of a social and societal crisis. Within the framework of the European Union, we have Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019, which establishes a debt discharge procedure for entrepreneurs and, as the regulation itself states, in many cases it is not possible to establish a clear distinction between the debts of the entrepreneur derived from his commercial, industrial, craft or professional activity and those incurred outside the framework of these activities. Therefore, entrepreneurs would not effectively enjoy a second chance if they had to go through different procedures, with different conditions of access and time limits for discharge, to obtain discharge of their business debts and their other debts outside the framework of their business activity. The Directive assumes that there are no binding rules on consumer over-indebtedness and recommends that Member States implement consumer rules on debt relief. Member States should ensure that at least one of the procedures gives the insolvent entrepreneur the opportunity to achieve full discharge of debts within a period not exceeding three years, and shall determine any restrictions on the discharge of certain debts, provided that they do not concern maintenance debts arising from family relationships.

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European harmonization of private international law

Eva Jiménez Palma
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Legal practitioners find themselves increasingly faced with situations having cross border implications. These «cross-border private situations» present a greater degree of legal uncertainty than «purely internal situations». Its connection with different legal systems makes it more difficult to ensure its continuity and a predictable and effective legal system. The role of Private International Law is to provide appropriate responses to these relationships. Since the Treaty of Amsterdam (1997) conferred competence to the European Union to legislate in the area of private international law, with the aim of promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction, and facilitating the circulation of foreign decisions by laying down provisions on their recognition and enforcement, an important number of European legislative instruments have been adopted: REGULATION (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters («Brussels I bis»); REGULATION (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction («Brussels II ter»); REGULATION (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; REGULATION (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession; REGULATION (EC) No 593/2008 on the law applicable to contractual obligations («Rome I»); REGULATION (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations («Rome II»); among others. This paper will provide a general introduction to the bases of European Private International Law; to the legal instruments which have been adopted in this field; as well as its compatibility with other rules of private international law (inserted in international conventions); and its precedence application over domestic rules of the EU Member States.

Reactor

Prof. Rommel J. Casis

Associate Professor, UP College of Law
Director, UP Institute of International Legal Studies
Editor-in-Chief, Philippine Yearbook of International Law
Executive Director, Philippine Society of International Law

The problem of financial literacy within the banking sector

Joana Farrajota
NOVA School of Law, Lisbon

The importance of financial literacy has been recognized for about 2 decades at an international level. The 2008 financial crisis had a relevant role in generating an increased interest on the matter. As a result the promotion of financial literacy has been the subject of a multitude of initiatives by supervisory bodies, financial institutions as well as other players in civil society, at a national and supra national level. However, despite all efforts, actions, financial literacy, in particular at a consumer level, remains low, in general, and low, for instance, in Portugal, in particular, as well as in the Philippines. On the other hand, the focus of action on financial literacy has been placed, essentially, on the consumer side, on improving consumers' literacy. It is my understanding that although this line of action is essential, it has to be complemented, combined with an action of promoting financial literacy on the side of the agents offering financial services to same consumers in the markets. In a context of low financial literacy, bank staff members are likely to play a particularly influential role in the financial decision-making, ultimately being able to contribute positively or negatively to the consumer's financial behaviour. In my intervention I will analyse one specific example of an attempt to increase and ensure bank staff members literacy levels in the context of mortgage credit, within the EU: the knowledge and competence requirements defined by the Mortgage Credit Directive (Directive 2014/17/EU, on credit agreements for consumers relating to individual immovable property)."

Reactor

Atty. Czar Ian R. Agbayani

Teaches taxation law in Ateneo de Zamboanga University, College of Law
Counsel, Development Bank of the Philippines and The Securities and Exchange Commission

Gonzalo Martínez Etxeberria
University of Deusto

The cooperative model: An alternative model based on values and principles

In the current globalized world, capitalist corporate forms dominate the generality of corporate models that compete in an increasingly aggressive market in which concepts such as time, ratio, profit, cost, etc... are permanently present. Cooperativism is a model that competes in the same market against these capitalist forms, adds to these concepts some values and principles that are inherent to this model and that make a condition of its way of being and acting in the market. In this sense, the traditional cooperative values and other new values that are emerging and the practical cooperative principles of action are and must be the axis on which cooperativism pivots when it comes to developing.

Reactor
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Executive Director, Anti-Drug Abuse Council, Caloocan City
Executive Director, Community Based Rehabilitation Alliance (COMBRA)
Resource Person, Caloocan Cooperative Office

Giulia Priora
NOVA School of Law, Lisbon

Modernizing Copyright Law: The EU experience

Since 2016, the European Union (EU) has been undergoing a pivotal phase in the long overdue modernization of its intellectual property, and in particular, its copyright legal framework. The reason why particular attention was given to this specific branch of intellectual property law lies primarily in the deep fragmentation that characterizes copyright across Europe. Each of the 27 EU Member States counts on its own consolidated national legal culture, when it comes to regulating the protection and access of creative content, such as books, music, movies, photographs, press articles, scientific works, but also computer programs and databases. This regulatory fragmentation clashes with the increasing digital and borderless practices of production and consumption of these types of content. For this reason, the EU set forth a timely attempt to boost the ongoing harmonization of national copyright rules by way of a new EU Directive on Copyright and Related Rights in the Digital Single Market (nr. 790/2019, hereinafter the CDSM Directive). The CDSM Directive represents a very interesting case study not only from an internal EU perspective, but also to investigate how the modernization of the copyright legal paradigm is taking different shapes on a regional and global scale. The presentation will showcase this added value in the comparative legal and policy research, illustrating the main underpinnings and features of the CDSM Directive and its current implementation across the EU.

Reactor
Atty. Alex Ferdinand S. Fider
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President, Intellectual Property Association of the Philippines
Chairman, Asian Patent Attorneys Association

EU rules on international data transfers: Lessons from the Schrems saga

Francisco Pereira Coutinho
NOVA School of Law, Lisbon

If data is the new oil, then the free flow of personal data will be crucial to economic development worldwide. The European Union (EU)'s legal framework on international data transfers foreseen in the General Data Protection Regulation (enforced since May 2018) are to be interpreted in accordance with the decisions of the European Court of Justice in the Schrems cases. The latter invalidated adequacy decisions regarding the United States of America adopted by the European Commission in 2000 and 2016. This seminar aims at explaining how this case law impacts the transfer of personal data from the EU to countries such as the Philippines, which have not yet been the object of an adequacy decision from the European Commission.

Reactor
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Bar examiner in political law
Program Director, Competition Law and Policy Program, UP Law Center
Former Executive Director, Philippine Competition Commission

A new legal approach on AI

Jorge Villalobos Portalés
University of Málaga

From judgments as well known as those of the "Zeilin vs Baidu" case or the Shenzhen and Dreamwriter case, both in 2019, where both under Chinese copyright law, the first categorically denies that an AI can be an author and the second, on the other hand, recognises the copyright of a work created by an AI. Thus, the Dabus case and its recognition by the South African Patent Office or the judgement of the Federal Court of Australia (and the separate vote in the appeal in the UK in September 2021 by Lord Birss). Or the RAGHAV case in India, where the co-authorship of an artificial intelligence was recognised. And in Spanish law, what could happen, would there be the option of recognising the authorship of an artificial intelligence for its works within the Intellectual Property of the Iberian country? This paper analyses the possibilities of the authorship of artificial intelligence in Spanish law, and the particular proposal of a cyberhumanoid person within the range of alternatives. In short, this issue is of great relevance in these times as it raises legal dilemmas that should not be ignored. What is more, they should be studied with the greatest possible depth and rigour in order to offer and reconcile answers and perspectives. Otherwise, consumers will be defenceless against the creation of products (be they literary, scientific or artistic) of which they do not know who the real author is. For example, if the EU's latest Artificial Intelligence Act of 21 of Aphril of 2021 requires notice to be given when interacting with an artificial intelligence, why should the same not apply to Intellectual Property? If this is already happening with chatbots (among other cases), it might not be too far-fetched to consider it with other fields such as Intellectual Property.

Reactor
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NOVA School of Law, Lisbon

"Lawfare" and technological restraint: The case of the Brazil-USA technology safeguards agreement

The term "lawfare" means the use of Law as an instrument to obtain a military advantage in substitution of a traditional kinetic mean. It is a practice even more recurrent in the contemporary world to legalize and legitimate hostilities, conquer the public opinion and achieve objectives without the costs of a military operation. However, the incipient literature about the issue lacks methods and criteria to systematize such practice. In this sense, several mechanisms of Private and Commercial Law have been used under a broader military strategy in order to reach geopolitical goals. The objective of this paper is to present the example of the Technological Safeguards Agreement between Brazil and US and how legal mechanisms are used to promote technological denial in a way to provide a military advantage for one of the parties involved. In this case, we gather theoretical parameters on lawfare and examine the content of the TSA to explain how the United States deployed a legal weapon to prevent Brazil from obtaining a dual-use sensitive rocket technology.

Reactor
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Vice-Chair, Technology Law and Policy Program, UP Law Center
Resource Person in policy research and formulation in data privacy, technology law, and other emerging areas of law

Emilio Armaza
University of Deusto

Finding the limits between freedom and criminal liability of drug consumers: The case of "consumers associations" under Spanish criminal law

Reactor
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Miguel Moura
NOVA School of Law, Lisbon

Modernizing digital finance: new FinTech trends

Reactor
Atty. Sharon B. Millan
Teaches taxation law in University of San Agustin College of Law
Certified Public Accountant-Lawyer

Modernizing Private Law

Balane on the *reserva troncal:* A computational law walkthrough

Emerson S. Bañez
University of the Philippines

In 1983, Prof. Ruben Balane delivered the JBL Reyes Professorial Chair Lecture titled: The Reserva Troncal: Prospect and Retrospect. The lecture, which was later memorialized as an article in the Philippine Law Journal, can be a strange read, now seemingly incongruous with the flashier content of contemporary journals. Professor Balane promised no dramatic reconfiguration of legal understanding, no fashionable recontextualizing of law within systems of class, gender identity, or politics. Instead we have a deep dive into a single provision, a single rule in the Civil Code. This approach, now somewhat of a lost art, may hold key lessons for computational law. Converting legal knowledge into computable form requires more of the Balane approach to legal scholarship: 1) focusing on discrete concepts; 2) explicit declaration of the content and structure of the rules, including unstated assumptions; 3) investigating the "edges" of the rules, where their normative power may no longer apply. This paper will trace the reasoning in Professor Balane's lecture to build a computational model for the reserva troncal. The analysis will focus on modeling the following aspects of the rule: 1) actors and objects involved in the rule; 2) the expected interactions between these actors and objects; 3) elements of the rule that are time-bound; 4) instances where the logic of the rule are defeasible. The paper will then conclude with prospects for expanding the project.

Modernizing Criminal Law

Transformative justice in the Philippine criminal justice system: Planting the seeds for a kind society

Leila de Lima
Senator, Republic of the Philippines
She is currently a detention prisoner at the PNP Custodial Center, Camp Crame

As a legislator, and in view of her previous positions and DOJ Secretary, one of the principal concerns of Sen. De Lima was the modernization of the country's criminal and penal systems. In the last 5 years, she filed in the Senate several bills including the Human Rights Defenders Bill, the Refugees and Stateless Persons Protection Bill, and the Unified Penitentiary and Prison Reform Bill.

Senator de Lima will speak about the need to amend Philippine criminal laws and the fact that the Philippine legislature has long been considering enacting a new code to replace the Revised Penal Code and codify various special penal statutes. She will also discuss the need for awareness of the global trends in penology, social justice, and criminal law theories and philosophies, recognizing that modernizing criminal law requires not an only intimate knowledge of the culture of our people but likewise cross-border knowledge sharing and data based research.

SIXTH SPANISH-FILIPINO SCIENTIFIC CONGRESS:

MODERNIZING CRIMINAL LAW AND PRIVATE LAW

EUROASIA VISION 2022

RAPID FIRE

The rapid-fire segment of the Congress is a platform for law students to present their legal theses and research topics in front of the international legal community, within a period of 8 minutes or less.

Czar Matthew Gerard Dayday
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College of Law

Amer Mission Madcasim, Jr.
University of the Philippines
College of Law

(Un)Fortuitous event: The COVID-19 pandemic as a fortuitous event

Justin Francis Bionat
University of San Agustin
College of Law

The Philippine party-list system and representation of marginalized populations

Ervin Gedmaire Caro
University of San Agustin
College of Law

Finding the antidote for democratic decay by disinformation

Yzabel Layson
University of San Agustin
College of Law

An analysis of provisions from the Revised Penal Code on the difference of penal sanctions and liabilities of men and women

Luis Miguel Tirador
University of San Agustin
College of Law

Pay up: A critique of the Philippines' determination of the minimum wage

Kaitlynne Therese Reyes
Ateneo de Zamboanga
College of Law

Environmental governance in the Philippines

Moh Asraf Baird
Ateneo de Zamboanga
College of Law

What is means to punish in 2022

Nishan Imlan
Ateneo de Zamboanga
College of Law

Hijab as an exercise of the constitutional freedoms of expression and religion

Invitation

June 10
5:00 PM

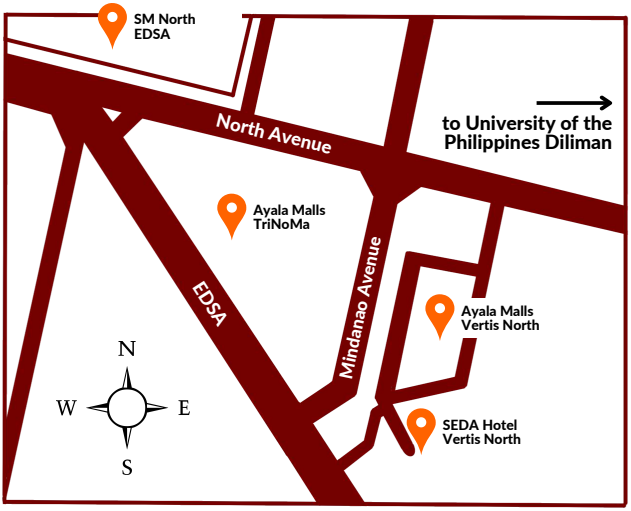
Fellowship dinner: UP President's night
UP Diliman

June 11
6:00 PM

Dinner and show: A cultural night
Ballroom, SEDA Hotel Vertis North

LOCATION MAP

Quezon City



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See you at the next CALESA Congress!

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