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COMMON LAW, CIVILIAN LEGAL SYSTEMS AND MIXED LEGAL SYSTEMS: IMPLICATIONS FOR THE IMPLEMENTATION OF ELEMENTS OF ENGLISH LAW IN KAZAKHSTAN

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Keywords: *common law systems; English law; implementation; mixed legal systems; national legal system; civil law.*

Abstract: *Kazakhstan currently experiences a turning point in its legal history: elements deriving of a common law system are to be implemented into the national legal system which has its roots in the civilian legal tradition. This move might mean that Kazakhstan is on the verge of becoming one of the 'mixed legal systems' which are a hybrid form of legal system at the intersection of common law and civil law. In order to shed light on what this implementation of elements of English law might mean for the Kazakhstan legal landscape, a brief overview of the typical characteristics of common law systems, civilian legal systems and – the rather rare – hybrid of mixed legal systems is presented. In addition, various ways in which elements of English law might be implemented in Kazakhstan are discussed.*

ЖАЛПЫ ҚҰҚЫҚ, АЗАМАТТЫҚ ҚҰҚЫҚТЫҚ ЖҮЙЕЛЕР МЕН АРАЛАС ҚҰҚЫҚТЫҚ ЖҮЙЕЛЕР: ҚАЗАҚСТАНДА АҒЫЛШЫН ҚҰҚЫҒЫ ЭЛЕМЕНТТЕРІН ПАЙДАЛАНУ САЛДАРЫ

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Түйін сөздер: *жалпы құқық жүйесі; ағылшын құқығы; имплементация; аралас құқықтық жүйелер; ұлттық құқықтық жүйесі; азаматтық құқық.*

Аннотация. *Қазіргі уақытта Қазақстан өзінің құқықтық тарихында бұрылу сәтін тартты: прецеденттік құқықтан бастауын алған элементтері құрлықтық құқықтық жүйесінен негізделген ұлттық құқық жүйеге енгізілуі тиіс. Бұл қадам Қазақстан құрлықтық құқықтық жүйесі мен прецеденттік құқық қиылысында орналасқан және құқықтық жүйелерінің гибридті нысаны болып табылатын аралас құқықтық жүйелер бірі болуының білдіруі мүмкін. Ағылшын құқық ережелерін имплементациялау Қазақстанның құқықтық ортасына қандай мән білдіретініне анықтау үшін осы мақалада прецеденттік құқықтық жүйесінің, құрлықтық құқықтық жүйесінің, және әлдеқайда сирек кездесетін аралас құқықтық жүйесінің типтік сипаттамаларына қысқаша шолу ұсынылған. Бұдан басқа, осы мақалада ағылшын құқықтық жүйесінің элементтері Қазақстанда қалай енгізілуінің әр түрлі тәсілдері қарастырылады.*

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ОБЩЕЕ ПРАВО, ГРАЖДАНСКИЕ ПРАВОВЫЕ СИСТЕМЫ И СМЕШАННЫЕ ПРАВОВЫЕ СИСТЕМЫ: ПОСЛЕДСТВИЯ ДЛЯ ПРИМЕНЕНИЯ ЭЛЕМЕНТОВ АНГЛИЙСКОГО ПРАВА В КАЗАХСТАНЕ

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Ключевые слова: *системы общего права; английское право; имплементация; смешанные правовые системы; национальная правовая система; гражданское право.*

Аннотация. *В настоящее время Казахстан переживает переворотный момент в своей правовой истории: элементы, которые берут свое начало из прецедентного права, должны быть внедрены в национальную правовую систему, которая основана на континентальной правовой системе. Этот шаг может означать, что Казахстан будет являться одной из смешанных правовых систем, которая является гибридной формой правовых систем и находится на пересечении прецедентного права и континентальной правовой системы. Чтобы пролить свет на то, что имплементация положений английского права может означать для правовой среды Казахстана, в настоящей статье представлен краткий обзор типичных характеристик прецедентной правовой системы, континентальной правовой системы, и намного более редко встречающейся, смешанной правовой системы. Кроме того в настоящей статье рассматриваются также различные способы того, каким образом элементы английской правовой системы могут быть внедрены в Казахстане.*

Common Law vs. Civil Law

Common law is often also referred to as 'judge-made law'. The main legal principles and rules in common law systems derive mainly from judicial practice. Traditionally, common law statutes – as legislation is referred to in the United Kingdom – only regulate specific issues, rather than determining the broad legal framework. The broad legal framework is based on customary rules, such as morals or good faith and fair dealing, which over the centuries have been developed further by judges when taking decisions in individual cases, and thus created judicial precedent for future cases. Unlike in civilian legal systems, judges in common law systems are allowed to develop the legal rules further whenever there is a gap in the law. However, in order to ensure a consistent treatment of cases by individual judges and consistent legal principles, there are certain rules within which judges must decide their cases.

One of the most important rules in any common law system is the Latin rule of stare decisis: the decision must stand. This rule means that judges have to look at decisions in previous cases when deciding the case before them in order to ensure that similar cases will produce similar results and therefore legal certainty is given due regard. When the facts in the case under consideration are different from previous case-law, the earlier judgment can be distinguished and the new case decided on the basis of its own special circumstances.

It is important to note in this context that the judges do not only look at the result of previous cases, they look especially at how judges in previous cases arrived at their decisions, that is the legal reasoning behind the judgment. Which basic principles did the judge consider, how did he weigh them against each other and why was a specific interpretation chosen in the end? In order to be able to look at this thought process of the judge, it is very important that the judge writes down in detail how he arrived at his decision and that the judgement is published for other judges and lawyers to read. In this process so-called 'landmark decisions' are especially helpful. Landmark decisions are judgments – often delivered by the Supreme Court or a higher appeal court – that determine a significant new legal principle or concept, or otherwise substantially affect the interpretation of existing law. Often they are considered to represent 'settled law', i.e. the predominant legal opinion. Often they also establish 'tests', usually including a list of requirements, that can be applied by courts in future decisions.

In addition to judicial precedent, the judges are bound by customs and unwritten rules. The most basic of these, for example, are moral standards, but also generally accepted conventions/traditions specific to a country such as the sovereignty of Parliament in the United Kingdom, i.e. that the will of Parliament must stand above anything else. The judge takes these general rules into account when interpreting the case before him. While this means that the judge cannot necessarily operate without any guidance, it still requires the judge to follow rules that often are not written down. While this

might seem surprising at first glance, especially when considered in light of the Soviet tradition of a strict control from the top, such a system has the advantage of being readily adaptable to changing circumstances, without having to go through an – often arduous – legislative procedure.

In stark contrast to this, civilian legal systems are heavily regulated by legislation and judges are not allowed to go beyond what is written down in legislation. Judges in civilian legal systems are of course allowed to interpret legal provisions, however, only within the limits prescribed by legislation. The flexibility to adapt to changing circumstances in civilian legal systems derives from the way legislation is drafted. In civilian legal systems, legislation is usually drafted in a very abstract manner so that the provisions can be adapted by way of interpreting them in light of the given circumstances. For example, where legislation from the 19th century refers to 'zeppelin' as a mode of transportation, we would nowadays read this to also include planes. However, the civil law judge can only adapt the rules insofar as this is, without doubt, discernible from legislation. In interpreting legislation, the judge in a civilian legal system looks to commentaries and academic legal literature for aides to interpretation.

Accordingly, what distinguishes the different types of legal system is the way legal rules and principles are created, rather than their content. In the common law system, it is the judge who distills new rules from previous case-law, whereas in civilian legal systems, it is the legislator who determines the content of legal provisions. Let me demonstrate this by presenting the following example:

A property owner (A) is negotiating with a chain of department stores (B) for the lease of land. As a precondition to their lease, they want an existing building to be demolished and a new one erected. In October the parties agree on the essentials of the contract, such as price, property, duration and they exchange a draft lease. The draft lease then goes back and forth between the parties' solicitors for minor changes. In the interest of time, A already starts to demolish the old building on the land and to build a new building according to B's wishes. In November, the personal relationship between the parties goes sour and B is not so sure anymore if they want to pursue the deal. However, they nevertheless continue working on the draft lease and leave A under the impression that the deal would be completed. In January then, when the new building is about 40% finished, B informs A that they do not intend to proceed with the deal [1]. This is the typical example of a so-called 'handshake deal' where the parties agree that there will be a deal to later let the lawyers work out the details. What can party A do in this case in order to enforce the deal?

In the common law tradition, party A would rely on the principle of 'estoppel' whereby party B cannot go back on their previous promise to complete the contract because, knowing that A incurred costs by acting on the basis of false assumptions, it was not fair for B to behave the way they did as it encouraged A to demolish the building and build a new building.

In the civilian legal tradition, for example Germany, A could rely on §311 in combination with §241 of the German Civil Code. §311 determines that „in order to create an obligation by legal transaction" a contract is necessary or „the commencement of contract negotiations". §241 entitles A to claim performance on the basis of the obligation. In both instances A will be able to enforce the deal with B.

As you can see, the outcome of the case is the same regardless of whether a common law or civil law approach is used. The difference between the principles used is that the principle of estoppel in the common law tradition developed over time on the basis of many different cases. That is why there are, in fact, many different types of estoppel as the concept was broadened and adapted to various circumstances through the years. The full extent of the principle of estoppel only becomes apparent when reading a vast amount of case-law. The German principle, on the other hand, is laid down in a specific provision of the Civil Code which is supplemented by commentaries on the Civil Code written by legal scholars. It is only in rather complex or new cases that the German lawyer will have research previous case-law.

However, this does not mean that the legal thought process in civilian legal systems is less complex. It merely means that the analytical work is done by the commentators (who usually are professors, judges and practitioners) at an abstract level, rather than by the judge and prompted by a specific case. The codes and commentaries in civilian legal systems ordinarily are the result of a collective effort by legal experts. Judicial decisions on the other hand are taken by a single judge or, usually, three judges. Control in the latter system is exercised ex post through the publication of all cases, whereas in civilian legal systems ex ante control is prevalent. Over the centuries, both types of mechanism have proven to be effective. When it comes to deciding which system to favour for a specific society, the socio-cultural dimension of law comes into play. For instance, societies where a tendency to abuse power is prevalent, often have evolved into civilian legal systems. Societies that favour flexibility, on the other

hand, have become common law systems. Yet, in societies where several cultures intermingle, so-called 'mixed legal systems'[1] can arise.

Mixed Legal Systems

Mixed legal systems can take on many different forms. Generally, they are legal systems that contain elements of different kinds of legal system, such as both common law and civil law elements. Often mixed legal systems used to be 'pure' systems, but later had to incorporate foreign elements to due foreign political influence. Scotland, for example, used to be a civilian legal systems with roots in Roman law. However, after the Union of the Crowns in 1603, the country was forced to accept English mercantile law, the doctrine of stare decisis, and other English legislation made applicable to Scotland [2. p. 370.]. A similar example would be Quebec which had a civil code based on French law and and later adopted parts of the English common law such as the doctrine of stare decisis and English procedural law. That is why in the early days of comparative studies, a mixed legal system was generally considered to be 'basically a civilian system that had been under pressure from the Anglo-American common law and has in part been overlaid by that rival system of jurisprudence'[3].

However, through time, the definition of a mixed legal system changed and later, mixed legal systems were defined as having the following characteristics: (i) civil law rules and principles are filtered through Anglo-American institutions, for instance, the common law judge; (ii) judicial decisions are given strong precedential value whether the civil law is codified or not; (iii) civil procedure is adversarial and Anglo-American, with an emphasis on remedies that leaves an imprint on substantive civil law; (iv) common law makes incursions into the civil law sphere by penetrating the most porous point of entry, such as the law of delict, while leaving resistant institutions such as property law relatively unaffected; and (v) commercial law is transformed and replaced by Anglo-American commercial law, because of pressure to conform to the norms of the dominant economy [2. p. 373.].

Despite not fulfilling the above-mentioned criteria, more and more, there is the perception of the EU legal system as a supranational mixed legal system, which is also an alterative way of describing the effects of legal harmonisation on Member States and Europe itself [2. p. 376.] Through EU legislation harmonising rules within certain spheres of both Member States rooted in the civilian legal tradition and common law Member States, elements of both traditions are present within the EU legal order.

Mixed legal systems often are considered 'laboratories of comparative law' and are given special attention in comparative legal research. However, as Palmer concludes, "In reality all systems are laboratories of comparative law and any system's experience could be of some value for others." [2. p. 379.] The same is true for the further development of the Civil Code of the Republic of Kazakhstan. Even though it is sought to further develop the Civil Code by way of implementation of principles of English law, valuable experience in this venture can be provided by any legal system, mixed or otherwise. In the final part of the present contribution, therefore, the various ways of how some selected principles of English law or their functional equivalents in other legal systems have been implemented will be discussed.

Implementation of English law principles in Kazakhstan

The 'Concept for the improvement of civil legislation of the Republic of Kazakhstan by implementation of English law principles' envisages the transplantation of elements such as judicial precedent; elements of corporate law (e.g. corporations, company acts and memoranda, shareholders' rights, director's duties, corporate social responsibility); estoppel; the doctrine of frustration of contract; rules on representation, warranties and guarantees; indemnity in contract; as well as framework and subscription contracts. It is not possible to deal with all of these within the scope of the present contribution. By way of example, the implementation of judicial precedent and the principle of estoppel will be discussed.

Adoption of judicial precedent – 'Ulgy'

The prominent role of case-law and judicial precedent in England first came about after the conquest of the Normans over the British Isles. The Normans were Francophone and had conquered a largely English-speaking, as well as hostile, territory. Nevertheless, they saw the need for developing a new legal order responsive to Norman and local needs. In lack of a shared language and given that the majority of the population could not read, they concluded that the only way to do this was through a loyal judiciary which was to be supported in their decision-making by a local jury. By imposing on the new permanent judges the obligation to create written testament of their adjudication, a posteriori control could be exercised over their activities by the King. To develop the teaching necessary for the new legal professions, working in the royal courts, English lawyers eventually developed the Inns of Court where the different types of procedures were taught through examples of earlier cases. To ensure legal certainty for the adjudicated, through time, certain cases emerged as 'leading cases' which became binding precedent. Thus was developed the common law as a new form of legal system

as well as the doctrine of judicial precedent [4]

In civil law systems, where a general distrust of the courts was prevalent before the 19th century, judicial precedents enjoy only a persuasive role and constitute a source of 'soft' law. The higher the level of uniformity in past precedents, the greater the persuasive force of case-law. Through time, this judicial practice emerged more and more as a way to ensure certainty, consistency and stability in the legal system which had not been possible to such an extent by codified law on its own. Importantly though, and in stark contrast to common law systems, courts are only required to adhere to previous decisions if there is sufficient uniformity. No single decision binds a court and no relevance is given to split case-law [5]. In addition, generally accepted case-law is referred to in legal commentaries and thus used to inform lawyers of the prevalent interpretation of a given legal provision.

The publication of 'Ulgy', model decisions by the Supreme Court of the Republic of Kazakhstan in any given field of law, will serve to enhance legal certainty and further the dissemination of legal knowledge. However, in the form currently envisaged, they will not amount to judge-made law. For one, the legal reasoning presented in these model decisions will be based on legislation, and only selected decisions will be prepared to serve as guidance for lower instance courts. In addition, the Ulgy could at any point be superseded by new legislation.

While there is no doubt that the publication of Ulgy will further the dissemination of legal knowledge and enhance uniformity of court decisions in the Republic of Kazakhstan, the implementation of such an instrument must be carefully thought through. For instance, in order to utilise such model decisions for lower instance courts to the greatest extent possible, their implementation must go hand in hand with the publication of the full text of the court cases underlying the model decisions. The legal reasoning underlying court decisions more often than not depends on the specific circumstances of the case under consideration. In a situation where lower courts are provided with the legal reasoning behind a decision, however not the underlying circumstances, they might not be able to make full use of the legal guidance thus provided. In the best case, judges at lower instance courts might choose to apply the legal reasoning provided in the Ulgy only to cases that exactly replicate the circumstances of the model decisions provided by the Supreme Court; in the worst case, the judges might run the risk of applying the models provided to cases that differ from the scenario that the Supreme Court had in mind in an essential detail. In addition, as the number of Ulgy might become substantial over the years, they must be published in an ordered and coherent manner. This could be done as an amended version to the existing commentary on the Civil Code of the Republic of Kazakhstan, in a style similar to German legal commentaries which provide, in the same publication, the text of codes and laws, as well as annotations by scholars and the most relevant court cases. The amended commentary could provide, among other annotations, the Ulgy relevant to a given provision. Such a commentary could constitute the main ressource, or a 'one-stop-shop', for judges, practitioners and students seeking to ascertain the correct interpretation of Kazakh civil law.

Estoppel

Estoppel might easily be the most infamous element of English law. It is said to be a principle unique to the English legal system. To understand the value of the principle within the sphere of English law, one must understand how the English law of contracts is based on the idea of consideration (in other words: the idea of 'quid pro quo'). This means that unilateral promises are not enforceable. This is in stark contrast to the contract law in civilian legal systems, which is based on the idea of cause, and therefore effect can be given to unilateral promises. However, not enforcing unilateral promises can, at times, lead to an unfair result. A famous example is the landlord who, during World War II, promised to forego part of the rent due by his tenant as they were unable to find enough tenants due to evacuation of London during the war in any event. At the end of the war the flats became fully let and the landlord demanded the payment of full rent again. It was observed in the judgment that it was not possible for the landlord to be reimbursed for the rent foregone during war times as the tenant had relied on the promise [6]. Out of these circumstances, the principle of estoppel was (re-)born. Importantly, as estoppel is not based on the idea of consideration, it represents an exception within the English law of contracts. It is a fall-back principle, rather general in nature, for situations where, for some reason or another, no formal agreement (such as a contract) has come into existence [7].

Estoppel has many different forms of appearance with 'separate requirements and different terrains of application' [8]. Given the multifarious nature of the concept, it is difficult to grasp and even more difficult to transpose into another legal system. The 'Concept for the improvement of civil legislation of the Republic of Kazakhstan by implementation of English law principles' foresees implementation of the principle only insofar as it concerns promissory estoppel.

Promissory estoppel is one of the more recently introduced types of estoppel [6] It is one of the reliance-based estoppels, i.e. it can be invoked when someone wishes to enforce a promise made without any consideration provided in return [8. pp. 3-90]. In addition, reliance on the promise must have caused detriment to the person trying to invoke the principle of estoppel. Promissory estoppel has four elements (i) an unequivocal promise by words or conduct; (ii) the promise was reasonably relied upon; (iii) detriment resulting for the person relying on the promise; and (iv) fairness requires enforcement of the promise. Promissory estoppel relates to future events, unlike estoppel by representation which relates to a past or present fact that is either true or not [9. p. 701]. The four elements provided above are merely one formulation of the principle, many more exist in the existing case-law. There is no one codified version of the principle in English law. Therefore the question how to transpose the principle into a civilian legal system, such as Kazakhstan, easily suggests itself.

Since 2005, the French Supreme Court for private and criminal matters ('Cour de Cassation') has implemented the concept of estoppel in French arbitration law. It has been described by French courts as a 'rule against self-contradiction to the detriment of others'. This indicates that estoppel is more seen as an instrument for sanctioning parties acting inconsistently or in bad faith, rather than protecting parties relying on representations or promises made by another party with the result of detrimental consequences. It thus has been stated by several French scholars that the same result could therefore also be achieved by recourse to the principle of good faith. What is more, even some courts have expressly stated that the scope of the principle of estoppel, as applied in France, could coincide with the earlier French principle of waiver and that they were not mutually exclusive, therefore could be applied concurrently within the French legal system [10] The principle of estoppel, however, has not been codified in France. Accordingly, it might be useful to look at further example of implementation of the principle within legal systems based on the Roman law tradition.

There are two US federal states that have codified estoppel: Georgia and Louisiana. For present purposes, only the example of Louisiana will be discussed as it is a mixed legal system and therefore will better lend itself for comparison with a civilian legal system [9. p. 695][1] as it exists in Kazakhstan. A gap in the 'variegated framework' of the mixed legal system caused the codification of estoppel in Louisiana by amendment to the Civil Code [9. p. 719.]. The amendment was passed in 1984 and entered into force in 1985 [11]. Since then, Article 1967 of the Louisiana Civil Code reads:

'Cause is the reason why a party obligates himself.

A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on thepromise. Reliance on a gratuitous promise made without required formalities is not reasonable.'

It is clear from the wording of Article 1967 that one of its objectives was to reconcile cause, as a major element of civil contract law, with the principle of promissory estoppel. At first view, one might conclude from the wording of this provision that detrimental reliance was conceived of as an exception to the requirement that every contract must have a cause. However, such a conclusion cannot be right as the preceding article of the Louisiana Civil Code states that 'an obligation cannot exist without a lawful cause' [9. p. 721]. Rather, in this context, the promise is cause for the obligation incurred. For the common law lawyer it is rather odd that the promise only becomes binding under the requisite that the proper formalities are fulfilled. Such a formality could be, for example, the requirement of a notarised document for the gift of land as it would be unreasonable to presume that a land transaction could be effected without the formality [9. p. 735]. Similarly, the 'Concept for the improvement of civil legislation of the Republic of Kazakhstan by implementation of English law principles' envisages that the promise must have been made in writing. This is far from the underlying rationale to the principle of estoppel in English law, which was intended to serve in cases where, for some reason or another, no formalities were followed. Requiring there to be a promise in writing deprives the principle of estoppel of its very essence. In addition, as estoppel is a dynamic common law principle which is inherently flexible, it will not be possible to make it a codified principle while also staying true to its character.

Accordingly, it might be useful to also look at functional equivalents of estoppel in civil law systems. The German Civil Code, in §780 BGB, contains a provision on the 'promise to fulfil an obligation'. It reads:

'For a contract by means of which

[1] *The functional equivalent to estoppel in Scots law, personal bar, is of little use in this context as it has not been codified.*

performance is promised in such a way that the mere promise is intended to establish the duty (promise to fulfil an obligation) to be valid, to the extent that no other form is specified, it is necessary for the commitment to be made in writing. The commitment may not be made in electronic form.'

The promise to fulfil an obligation under §780 BGB represents a contract creating a unilateral obligation. The contract can be formed independent of the existence of cause or a legal relationship between the parties involved. Therefore the provision is considered to create an abstract contract. Just as is envisaged under the 'Concept for the improvement of civil legislation of the Republic of Kazakhstan by implementation of English law principles', the promise to fulfil an obligation under §780 BGB must be in writing. Given that the existence of cause is not necessary in the case of a promise to fulfil an obligation, the obligation can be enforced more easily. It is up to the party owing the obligation to bring forward the defence of unjustified enrichment or similar. In addition, the German Code of Civil Procedure allows for less stringent standards of proof in the case of claims based on abstract legal obligations [12] and also enables the claimant to obtain a judgment which is provisionally enforceable without providing any security [13]. This provides both legal certainty and a swift legal instrument to the person who is owed the obligation [14].

Conclusion

Kazakhstan has undergone significant economic development over the last 20 years since the Civil Code of the Republic of Kazkahstan was first passed. Therefore it is necessary to adapt the Civil Code, as well as other civil legislation, to the new economic realities. In implementing reforms, experiences from other legal systems can be most valuable. While the main source of inspiration for the pending reform of civil legislation in Kazakhstan seems to have been English law, in implementing these new elements into the legal system of the Republic of Kazakhstan, and at the same time ensuring coherency and integrity of the system as such, relying on experiences from its brothers and sisters of the civilian legal tradition could prove essential. This means that the reform must necessarily represent a multi-step process: first, the legal elements suitable to fill the regulatory gaps in the civil law of Kazakhstan must be identified; second, comparative studies on functional equivalents in countries with legal systems similar to Kazakhstan are undertaken; and third that the right form of implementation appropriate for the specific needs of Kazakhstan is chosen.

REFERENCE

1. There are various forms of mixed legal system, combining elements of civil law, common law, muslim law and customary law. Mixed legal systems of civil law and common law are found in Botswana, Cyprus, Guyana, Louisiana (United States), Malta, Mauritius, Namibia, Philippines, Puerto Rico, Quebec (Canada), Saint Lucia, Scotland (United Kingdom), Seychelles, South Africa and Thailand. For further detail, see PALMER 'Mixed legal systems' in BUSSANI & MATTEI (eds.), The Cambridge Companion to Comparative Law, Cambridge University Press, Cambridge: 2012, pp. 368-383 at p. 379 et seq.
2. PALMER, 'Mixed legal systems' in BUSSANI & MATTEI (eds.) The Cambridge Companion to Comparative Law, Cambridge University Press, Cambridge: 2012, pp. 368-383.
3. SMITH, 'The Preservation of the Civilian Tradition in "Mixed Jurisdictions"' in YANNOPOULOS (ed.), Civil Law in the Modern World, Louisiana State University Press, Baton Rouge: 1965, p. 4.
4. GLENN, Legal Traditions of the World, Oxford University Press, Oxford: 20073, pp. 224-240.
5. See, also for a more detailed discussion, FON & PARISI, 'Judicial precedents in civil law systems: A dynamic analysis' in 26(2006) International Review of Law and Economics, pp. 519-535; see especially pp. 521 & 522.
6. Central London Property Trust Ltd. v High Trees House Ltd. [1947] KB 130.
7. It might be interesting to note that the damages for breach of contract are much higher than reliance damages under promissory estoppel. Therefore it is also in the interest of the party seeking the claim to try to establish breach of contract first.
8. PEEL, Treitel on the Law of Contract, Sweet & Maxwell, London: 201514, pp. 3-90.
9. SNYDER, 'Comparative Law in Action: Promissory Estoppel, the Civil Law, and the Mixed Jurisdiction' in 3(15) 1998 Arizona Journal of International and Comparative Law, pp. 695-751.
10. See CUNIBERTI, 'Enhancing Judicial Reputation through Legal Transplants "Estoppel Travels to France"' in 2(60) 2012 The American Journal of Comparative Law, pp. 383-400.
11. See LA Civ Code 1967.
12. See §§592 et seq. ZPO (Code of Civil Procedure).
13. See §708 Nr. 4 ZPO (Code of Civil Procedure).
14. For the preceding paragraph see OETKER & MAULTZSCH, Vertragliche Schuldverhältnisse, Springer Verlag, Berlin:20134, p. 798 et seq.