

ABSTRACT

Project financing between lex mercatoria and contract: discovering the “cause”.

The introduction explains that the purpose of the dissertation is to illustrate the project financing evolution, comparing the economical and juridical dimensions of the lex mercatoria and contract.

Lex mercatoria is derived from the common application which, in business, gives rise to the new figures with relevant roles in the economical field, and which does not find any correspondence in the classic law categories.

Contract in national law is a classical dogmatic tool for the excellence in law and enables the outlining of the economical praxis.

For some scholars project financing is a complex ensemble, derived from the economical praxis; for other scholars it is a fine juridical creation, developed from a network of different contract types.

The purpose of this dissertation is to illustrate some profiles of this complex ensemble, particularly those of juridical concern, with emphasis on critical aspects and on differences with other close institutions.

The dissertation does not develop the analysis of the technical aspects, which are already clarified by existing theories. The paper rather outlines some structural principles and special laws governing project financing. We analyze the lex mercatoria and the contract, with a special emphasis on the economic and juridic dimensions. A new reading of the analytical and the interpretative pathways is developed, focusing in particular on its new promising aspects.

We outline the strict interdependence between the economical and the juridical aspects of the complex finance operations. In the first chapter we define the project financing operation, its origin and its history.

In the second chapter we illustrate the concept of *lex mercatoria*, market, goods, exchange, bargain, economical evolution, finance, free market. The complex juridical rules of the market are illustrated through the analysis of the Constitution 41 article. We analyze the role of the State Institutions such as the welfare state, the public enterprises, the public services, and the managing models. The globalizing and internationalization aspects are also considered with their effects on these institutions, and the ensuing necessity to create new figures for project financing. The failure of public management is also discussed and the advantages of project financing, focusing on the private capital enrollment in the infrastructural building projects.

The project financing is a collaborative way aimed at overcoming the public-private dichotomy. We discuss the place of project financing in the public law and the necessity of introducing a new trading figure in the private law. The third chapter deals with the contract as defined by the market place as economical operation. The “causing” element is analyzed. In the project finance the cause element has to do both with the negotiation linkage and with the contract final purpose.

The topic of the fourth chapter is the application of the rule of law in the relationship between public, private and international partnership through the recent law on the new public contract code.

Finally the fifth chapter deals with the most interesting project finance contracts and contains an analysis of a practical example, related to the commercial park in Giugliano (Campania).