

The impact of Europeanization in Cyprus Contract Law and the Spill-Over to Matters of Civil Procedure: More Pieces on the Mosaic?

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Modern legal analysis is concerned with dissecting legal systems that are at the brunt of principled change and international material interdependence, locating their position within the spectrum of established legal tradition, and attributing colour to the substantive and procedural content of their historical development. This book is the result of the work and efforts of legal expert Dr Nicholas Mouttotos, who holds a PhD from Maastricht University Faculty of Law, Department of Private Law, and whose research interests focus on, among others, European private law, Contract Theory, European contract law and the financial crisis, Comparative law and theory, and Law & Economics.

This academic book uniquely combines the impact of Europeanization on Cypriot contract law, and the peculiarities of Cyprus as a mixed legal system, with a discussion of the implications that the latter has on civil procedure. The composition of Cypriot contract law and civil procedure on the one hand, and the Europeanization of these areas of law on the other, are reflected emphatically in the title of the book itself, which posits the question whether there will be ‘more pieces on the mosaic’. This inquiry reflects the uncertain destiny of the Cypriot model in our complicated, shifting legal environment.

The author has successfully chosen to engage a multi-level analysis, which serves the in-depth analysis of the subject and its completeness. On the one hand, he synthesises theory with practice. The book is divided into two parts, ‘Approximation from Theory’ and ‘Approximation from Practice’. These separated parts allow Mouttotos to draw diverse connections between the macroscopic political challenges facing the island, such as its geopolitical position and occupation, the values embodied by the myriad Western legal systems on which its principles are based, market pressures and economic indicators, and the dynamics of EU law diffusion. He situates the Cyp-

riot legal system within this complex landscape and crafts a circumspect critique accounting for the authentic mixture of challenges and forces that guide its ideology and impress themselves upon its foundations.

On the other hand, the analysis in the book also follows a historical approach. Citing Symeonides' depiction of the elements of Cypriot law as 'accidents of history', the author keenly takes into account the historical path of Cyprus. He recognises that Cyprus' characterisation as a mixed legal system, or mosaic, derives from its provenance as a British colony, an independent state, and then a member state of the European Union. Moreover, the analysis follows a comparative legal approach; the theory developed by scholar Jan Smits is scattered throughout the book and serves as a cornerstone of discussion in Chapter 3, 'Comparative Law and Economics', and Chapter 4, 'Contract Law in the Aftermath of the Financial Crisis'. This infuses the author's conclusions with a tangible sense of legitimacy and justification, through the lens of comparative scholarship.

The book is divided into two parts and seven chapters. The second chapter of the book, 'The Legal System of Cyprus as a Mixed Legal System', seamlessly weaves together a discussion of legal classification and an analysis of the Cypriot jurisdiction. The chapter examines how legal systems can be classified into five different families, and places Cyprus within the 'third legal family', a concept developed by Vernon Valentine Palmer, building on the work of Symeonides and Hatzimihail. Mouttotos chooses to look deep into the webs of Western legal tradition that have spawned Cypriot law and its myriad claims to the values of formalism, individualism, rationalism, and liberalism. He dissects the mixicity of Cypriot law, particularly as a legal system in which judicial common law inclinations coexist alongside institutions designed by civil law principles. Impressively, the author succeeds in distinguishing Cyprus from other mixed systems as having its own unique cocktail of influences and traditions. His detailed analysis of the influence that English traditions continue to exert upon Cypriot law shows the manner in which political and material contexts can impact the elasticity and adaptability of legal institutions. The urgency of this chapter is palpable; the author himself posits that all legal institutions in the EU will inevitably mix to some extent, making clear the relevance of his project to our contemporary legal discourse.

The author also sketches a comprehensive historical overview of Cyprus through the years, from British colony to a possible solution through a bizonal bicomunal federation. He then discusses the Cypriot economy and gives a full picture of the legal

system, analysing both the civil and common law sources that weigh heavily upon the Cypriot judicial system. Finally, the author critically evaluates the current situation in Cyprus with regard to EU membership and the challenges that such entails. Mouttotos identifies that, ultimately, Cypriot law remains conciliatory regarding its 'bastardised' origins. The law aims to reconcile and segregate differing legal influences to various extents, rather than maintaining an unresolved parallel legitimacy between the two conflicting legal systems. This is made more difficult through attempts to achieve harmony with European law, especially in contract law, which have produced incomplete or strained reinterpretation at the hands of Cypriot judges. Particularly interesting is the conclusion that the author reaches in Chapter 2, and his enhancement of such in Chapter 5; he observes that, despite the adoption of EU derivative law within the Cypriot legal order, alongside various laws such as the United Nations Convention on Contract of the International Sale of Goods (CISG), English contract and commercial traditions continue to prevail within the contract law of Cyprus. The author credits the persistence of the English influence to the reluctance of lawyers and judges to rely upon the CISG, and the fact that absorption of the Unfair Contract Terms Directive into legal practice and case law has been gradual.

Thus, while civil design dominates the public core of the state, private economic relationships are still directed by the distant hands of common law precedent. This is mostly the result of pragmatic inertia rather than conscious principle. Mouttotos' analysis thus raises the qualified observation that domestic and European measures have found greater success in institutional, rather than jurisprudential, convergence. Common law thinking in the private sphere is resistant, and thus it seems that large scale institutional reform and reorganisation are needed in order to leave the character of civil law legislation untainted. Until the introduction of formal elements and concepts, the law will remain liable for reinterpretation and underhanded material qualification.

Chapter 3 is dedicated to comparative law and economics. The author, inspired by Austrian-British economist and philosopher Friedrich Hayek's 'The Road to Serfdom', creates the theoretical basis on which the analysis of the following chapters is built. This chapter is particularly crucial, attempting to answer some challenging questions such as whether European private law has an autonomous character, whether mixed legal systems are more receptive to outside influences, and what drives their mixedness, approaching this primarily from their theoretical basis. Moreover, the author analyses the influence and impact of the competitive process in European law, thus

introducing and assisting the reader in understanding the influence the European law has on the Cypriot legal system.

The author analyses the competitive process that leads to convergence between different jurisdictions as a tool towards efficiency, while he refers to the LOT (legal origins thesis, the thesis that legal origin impacts economic growth and the common law is better for economic growth than the civil law) and, in particular, to the impact of the LOT on contract law. The author very cleverly concludes that the idea of the LOT and DBR (efforts to link the economic performance of a country with its legal system resulted in the Doing Business Reports of the World Bank) on Cyprus is mostly seen in the context of procedural law reform rather than contract law, as the Republic of Cyprus appears to be lagging behind in terms of contract enforcement, due to delays in the adjudication of cases.

Despite the author's extensive citation of LOT statistics and market trends, the intellectual bedrock and aspiration of this chapter leaves something to be desired. The author's methodology and direction follow a somehow narrow path, never quite shaking off the limitations inherent in the economic perspective of the thinker with whose work he begins his task. In proceeding to structure the entirety of this chapter around the assumptions and goals of this ideological persuasion, he possibly misses out on a richer analysis of the autonomous value of law and its visceral connections to social wellbeing beyond the abstract numbers of market growth. Arguably, this chapter could have engaged more seriously with criticisms of the traditional liberal economic model, which forms the foundation of much praise given to the common law model, failing to reflect on the important ways law can also affect economic distribution, spur innovation, and guarantee non-priceable standards of quality by mitigating market failure. Although the author mentions some of the alternative benefits of civil law systems in passing, he continues to found the vast majority of his analysis on the unchallenged precepts of common law market liberalism and an evaluation of Cyprus' positive affinities in terms of their capacity to conform. In fact, the premise of evaluating law as a market product (to use the metaphor employed) appears flawed from the beginning; it is not merely a static product dependent and vulnerable to market forces, but a dynamic force that itself has the power to write its own rules, thus manipulating the demand of 'its customers' and exacting from them their own productive fidelity.

The comprehensiveness of the analysis of the issue of 'Contract Law in the Aftermath of the Financial Crisis' is shown by the fact that the author examines the Cypriot

legal system alongside the Greek system, a choice justified by the cultural affinity between both countries as well as the influence that Greek legal thinking impresses upon all civil law systems. Furthermore, both countries share high debts and have noted difficulties in the performance of contractual obligations to creditors. In general, the author highlights how Cyprus adopts a narrow reading of contracts and tends not to deviate from the orthodox common law principles of certainty and freedom of contract. This analysis is enriched by a discussion of the ethics of civil law systems and the contradictory perspectives between certainty and restorative justice, positive and objective duties, and subjective freedom of contract. Most crucially, Moutotos highlights the importance of fulfilling ‘the social function’ of Cypriot private law according to EU standards and adapting contracts to social circumstances so as to protect general economic stability and virility. Chapter 4 constitutes a significant contribution to the academic community, with the author prudently suggesting the use of EU law as a tool for contract modification.

In Chapter 5, the author deals with the main research question of the book, the impact of European law on Cypriot contract law. This chapter is dedicated to the impact of EU law on consumer contracts in Cyprus, especially for consumers of financial services, in particular the MiFID I and II. The author undertakes a critical analysis of Cypriot case law, comparing it to other jurisdictions that have influenced Cypriot development. In this chapter, the author puts emphasis on legislative control of fairness and, in particular, the directives for the protection of consumers and their implementation and impact on the Cypriot legal system. Furthermore, the author examines critically the difference in the application of the above-mentioned directives, on the one hand, by the courts and, on the other hand, by the public authorities and sectoral regulators. The author outlines that enriching Cypriot law with the nuance of civil law systems and Europeanization overall has been slow. Rules designed to mitigate the hazards created by uncertain financial environments have received weak implementation in Cypriot jurisprudence; for example, the courts have maintained a suspicion of pre-contractual evidence, unwilling to balance asymmetric power with the enthusiastic spirit of Greek law, whilst imposing a harsher burden of proof for the recognition of intimate relationships requiring positive duties of care and restricting application in the consumer context. The limited application of the good faith context in Cypriot law makes more sense in light of the hollow constitutional foundation, unlike the Greek Civil Code which establishes the social malleability and evaluation of a contract as an institution from the foundational level.

Finally, the doctrinal analysis of the impact of European law on the Cypriot legal system, in the light of contract law and civil procedure, turns to examine the recent developments made to the administration of justice in Cyprus. Chapter 6 of the book, titled 'Procedural Law as a Tool Towards Changing the Law', deals with some of these reforms, such as improved case management practices, increased resort to alternative dispute resolution mechanisms, the establishment of specialised courts, online dispute resolution, and court automation. The author comprehensively undertakes an ex post critical analysis of the impact that these changes have had on the application of EU law in the Cypriot justice system and properly suggests that such developments will ensure the uniform and effective application of EU law in Cyprus. Uniquely correlating civil procedure with contract law, the author shows how contracts can be better enforced through efficient civil procedures, with this programme of reform thus becoming a vehicle for the furtherance of economic growth. The author's analysis emphasises the challenge of coping with the volume and complexity of cases in the modern world, a situation that leads him to prefer the advantages offered by the inquisitive model of courts, functioning as an active extension of a bureaucratic state, and ensuring that even imperfect justice is seen as an effective and orderly tool.

In general, the author maintains an in-depth analysis of the issues at stake, allowing him to segue into tangential observations and subsidiary layers of perspective. Nevertheless, the writing suffers from the overuse of trite repetition and the tendency to gravitate towards an uncritical preoccupation with statistics and models. The emergence of certain valuable observations is sometimes frustrated by the timid hesitation to develop them into sharp, philosophically stimulating pronouncements on the nature of law.

In conclusion, this book constitutes an important contribution to academia in that the author provides a theoretical and critical analysis of the issues presented, providing insight into the conceptual and institutional proclivities of a mixed legal system under a range of pressures regarding the modern economy and transnational legal imports. This book, for its defined scope, stimulates legal thinking and embarks upon an in-depth study of contract law, European Union law and civil procedure, and the interrelationship between these areas of law.

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** The review was prepared with the help of Caitlin Gillett and Ioannis Karanasios, Jurisprudence students at the University of Oxford.*