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2007



EDITORIAL



Since its establishment, the governing principle of the International Union of Notaries has been the "spiritual unity of all Latin notariats". Hence, one of its first goals has been the reciprocal knowledge, which is a premise for all reflections and the main source of enrichment.

Following are some of the Union's main aims:

- Promoting notariats and helping in their organization efforts. The nature of the notarial activity requires a professional organization in order to direct the efforts of all its members in the same direction, maintain the quality level, make sure deontological standards are met, represent the profession before public powers and cooperate with international agencies.
- Studying legislation and Notarial Law and harmonizing both, and adapting the notarial activity to the needs of society.
- Organizing International Congresses.

This major institutional duty is in the hands of the Work Commissions, the Permanent Bodies and the Representatives of the Union before international agencies, and is reflected in the reports and papers submitted in international and regional congresses and events.

It may be affirmed that these goals have always been met by the Union, thanks to the passionate work of its leaders; endowed with a vocation to service, they have contributed their personal effort and knowledge for the sake of the UINL's spirit, which has remained unchanged since its memorable establishment on October 2, 1948. Our thanks to the founders and their successors for their hard, relentless work.

THE DIRECTOR



"...In order to fulfill its general and permanent goals, the Union relies upon the following Institutions:

a) The Permanent Notarial Office of International Exchange (ONPI), entrusted with the exchange and dissemination of Notariat-related information, the drafting and publication of the International Notariat Magazine (RIN) and the preparation of the studies entrusted to it by the Union Bodies.

b) The Administrative Secretariat is in charge of preparing and following up the files related to the different Union bodies, as well as aiding the Union Secretary draw up the minutes of the meetings; centralizing files and managing the Union's ordinary affairs. It is also the Union's administrative, accounting and financial center.

c) The International Congress of Notaries..."

"... TITLE IV: INTERNATIONAL CONGRESS OF NOTARIES

Section 46.- Nature

The aim of the International Congress of Notaries is to conduct a highly-scientific study on legal matters directly or indirectly involving the Notariat.

It is also aimed at providing the members of the profession with a forum for discussions and exchange of experiences, and allowing the notarial institution to publicize its role and experience.

Section 47.- Participation in the Congress

47.1 *Each Notariat which is a member of the Union is invited to participate in the Congress by sending its own delegation.*

47.2 *Every Notary comprised within the definition of section 1.2, as well as any individual member and jurist qualified under the applicable national law to practice the notarial profession may register and participate in the Congress.*

Section 48.- Participation of Observers and Guests

Le Comité d'Organisation du Congrès, au-delà d'inviter les organisations et les personnes indiquées par le Conseil Permanent, a la faculté de proposer au Président de l'Union l'admission, en tant qu'observateurs ou qu'invités, des organismes ou des personnes qu'il jugera appropriés selon leur activité scientifique, universitaire ou professionnelle, dans le domaine du Droit.

Section 49.- Periodicity

The Congress shall be held every three years within a period comprised between September and November. It shall not last more than seven days.

Section 50.- Organization

50.1 *The Congress shall be organized by a Notariat which is a member of the Union, chosen by the Permanent Council at least two legislatures in advance, from among the countries which have submitted a request to such end, alternating between continents whenever possible.*

50.2 *The Congress President, who also presides over the Hosting Committee, shall be nominated by the Notariat organizing the Congress and appointed by the Permanent Council, preferably from among its members.*

50.3 *The Congress Hosting Committee shall work closely with the Permanent Council and under the Council's instructions.*

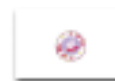
50.4 *Upon the holding of the Congress' last plenary session, the Permanent Council shall inform the approximate date, place and topics of the following Congress.*

50.5 *The Rules of Procedure the Congress shall be drafted by the Permanent Council."*

INTERNATIONAL CONGRESS OF LATIN NOTARIES

MADRID 2007

By Notary Alejandra Vidal Bollini



I am deeply honored to make a contribution to this brief prologue to the history and chronology of International Congresses of Latin Notaries. Looking back on October 2, 1948, the First International Congress of Notaries, held in the city of Buenos Aires, Argentina, was born based on the ideas of Argentine notary José A. Negri and his collaborators, who acknowledged that they expressed the spiritual unity of all Latin notaries in terms of their aspirations for the stability, well-being and progress of the Notarial Institution.

The Second International Congress was held in Madrid, Spain, on October 14-23, 1950. This Congress was very significant from an organic perspective, for it established a super organization, and for its overcoming of ideologies in legal matters. Twenty six notariats attended this Congress.

On October 3-6, 2007, the XXV International Congress of Latin Notaries will again be held in Madrid under the slogan "The Notariat: Worldwide Institution". The topics to be discussed are as follows:

I- "The Notarial Document as a Means of Development of Society".

II- "The Notarial Activity in Rural and Urban Environments".



Chronological Outline

Since 1948, the Congress' venues and topics have been the following:

I International Congress of Latin Notaries

1948 Buenos Aires (Argentina)

1948

SUJETS

1. Notarial law formation and basic elements.
2. Establishment of rules regarding notarial studies, and legal and specialized knowledge of notaries, as related to:
 - a) Type of studies and extension;
 - b) Specialized studies and notarial doctorate;
 - c) Organization of specialized libraries;
 - d) Dissemination of studies and ideas;
 - e) Publication of magazines and other publicity items;
 - f) Exchange of publications and papers.
3. Rules to be used as the basis of the registration system regarding property law; existence and operation of registries of ownership and other rights in rem; public information system, registration effects, procedures, organization.
4. International validity of public deeds. Forms. Capacity. Legalizations.
5. Establishment of the nature and scope of the notarial activity, and scope of its powers.
6. Establishment of the principles to be used as the basis for any proper legal organization of the notariat in terms of:
 - a) Qualification, age, nationality and behavior;
 - b) Incapacity and incompatibility regarding professional practice;
 - c) Limitation on the number of notaries vs. free practice; and rules applicable to each scenario.
 - d) Provision of notaries' offices;
 - e) Assistant notaries;
 - f) Notariat's governance and discipline;
 - g) Payment of services;
 - h) Retirements and pensions;
 - i) Minimum income system (sistema de congruas)
7. Notariat's independence and corporate organization at every country's domestic level; creation of schools, academies, institutes, seminars. Necessity and advisability of corporate independence. Nature and scope.

II International Congress of Latin Notaries

1950 Madrid (Spain)

1950

TOPICS

1. NOTARIAL ORGANIZATION

A) At the national level

- a) Entry in the Notariat: prior studies or college degrees. The initial equality of prestige vis-à-vis the law profession. Systems and aspirations.
- b) Permanent and fixed nature of the position as Notary: suppression of term appointments.
- c) Professional union organization of the Notariat: Regional associations of notaries and National Councils.
- d) Organization and functions of notarial records.
- e) Ways to prove the validity of a will: General Register of Wills.

B) At the international level

- a) Emblem of the International Congresses of Latin Notaries.
- b) Organization of an international notarial corporate system as regards:
 - 1) Legalizations
 - 2) Civil capacity
 - 3) Validity and contents of laws
 - 4) Marital systems
 - 5) Justification or evidence of testamentary or intestate succession: existence and contents
- c) International Union of Latin Notaries: final organization of the Permanent Committee

2. THE NOTARIAL DOCUMENT

- a) Attestation as to the knowledge of the parties and opinion on their capacity. Systems.
- b) The unity of the act and the successive execution.
- c) Legal value and uses of notarial certification of facts.
- d) Unification of forms, particularly powers-of-attorney.
- e) International value of notarial documents.

III International Congress of Latin Notaries

1954 Paris (France)

1954

1. Notarial law, an independent form-based branch of law:

- A. Existence of a form-based law, its purpose and limitations;
- B. Codification of notarial law in this restrictive meaning;
- C. Comparison of different ways to practice the profession.

2. Notarial law conceived as a body of rules governing the notarial activity:

- A. Notaries' role as advisers to the parties; their conciliatory role;
- B. The notarial practice, a source of rules of law;
- C. Professional responsibility.
- D. Notaries' social function.

IV International Congress of Latin Notaries***1956 Rio de Janeiro (Brazil)***

1956

TOPICS

1. The notarial institution; its position within the legally organized society.
2. Adaptation of notarial legislation to the Latin notaries' principles as defined by the preceding congresses:
 - a) Corporate organization;
 - b) Legal and professional training;
 - c) Functional competence.
3. Notaries' intervention:
 - a) In wills and successions.
 - b) In companies.

V International Congress of Latin Notaries***1958 Rome (Italy)***

1958

TOPICS

1. The effectiveness of the notarial document in international relationships.
2. The professional secret of notaries and their collaborators.
3. III Adaptation of notaries' professional activity to modern technical methods and procedures, particularly as regards the identification of the appearing parties, and the writing contained in originals and copies.

VI International Congress of Latin Notaries***1961 Montreal (Canada)***

1961

TOPICS

1. The public instrument (notarial public act). Comparative analysis of the rules concerning form which are common or similar among Latin law countries, and drafting of a text harmonizing such rules.
2. Commercial companies: Notaries' intervention in the stage involving the execution of the articles of incorporation or charter; during the conduct of corporate business and in the dissolution process. Necessity of notaries' intervention and limitations.
3. Didactic systematization of notarial studies.
4. Establishment of a General Registry of Wills.

VII International Congress of Latin Notaries***1963 Brussels (Belgium)***

1963

TOPICS

1. Conflicts of laws regarding marital systems, successions, donations, wills and distributions of decedents' estate.
2. International validity of instruments to authorize disabled persons.
3. Legal nature of an authentic notarial document.



VIII International Congress of Latin Notaries

1965

1965 Mexico (Mexico)

TOPICS

1. Conflicts of laws regarding marital systems, successions, donations, wills and distributions of decedents' estates.
2. Conflicts of laws governing civil and commercial companies.
3. Notaries and non-contentious jurisdiction.
4. Tax demands as regards the effects of legal acts.

IX International Congress of Latin Notaries

1967

1967 Munich (Germany)

TOPICS

1. Conflicts of laws regarding mortis causa successions.
2. The representation of commercial companies and evidence of such representation in private international law.
3. Capacity to act and dispose of property in comparative law and private international law.
4. Notarial organizations in the Union's countries.

X International Congress of Latin Notaries

1969

1969 Montevideo (Uruguay)

TOPICS

1. The rules of international law applicable to the conveyance and distribution of decedents' estate.
2. The Notariat in the modern world; adaptation to new economic and social demands.
3. Modes of establishing urban property joint ownership systems. Vertical and horizontal joint ownership. Real estate companies. Issuance of real estate titles.
4. Notarial verification of facts.

XI International Congress of Latin Notaries

1971

1971 Athens (Greece)

TOPICS

1. The Notary in the modern world. Adaptation to new economic, social, social welfare and mutual benefit fund demands.
2. The effects of divorce, legal separation (non-cohabitation) and de facto separation of individuals and estates in comparative law.
3. Influence of tax laws on contracts.
4. Publicity of real estate registers.

XII International Congress of Latin Notaries

1973

1973 Buenos Aires (Argentina)

TOPICS

1. Real estate property in today's world. Acquisition. Protection. Limitations.
2. The Notariat in the modern world. Expansion of public administration activity to the field of private contracts. The notarial public act and its vital function in modern society and in legal transactions.
3. Value and effectiveness of divorce resolutions in private international law.
4. Commercial companies:
 - a) limited liability sole proprietors (sole proprietorships, property subject to payments, liabilities or liens).
 - b) piercing of the corporate veil in commercial companies

XIII International Congress of Latin Notaries

1975

1975 Barcelona (Spain)

TOPICS

1. Exceptions to the "locus regit actum" rule in mortis causa disposals, successions and real estate conveyances.
2. Family law evolution as regards filiation, and personal and financial relationships between spouses.
3. Guaranties granted by home buyers to promoters and construction companies.
4. Company combinations and joint ventures and antitrust legislation.

XIV International CONGRESS of the Latin Notaries

1977

1977 Guatemala (Guatemala)

TOPICS

1. Origin of deeds; validity, effectiveness and free circulation of the legal business thus documented in private international law relationships.
2. The validity of acts and contracts executed by commercial companies before their registration with the Commercial Registry.
3. Problems affecting the legal certainty principle derived from a system of conveyance of real or personal property that may be registered by means of a private document; title insurance.
4. Banking contracts and notary's participation in such regime.

XV International Congress of Latin Notaries

1979

1979 Paris (France)

TOPICS

Companies and the Law

1. Companies and the role of law; legal and contractual needs. The notary's role in meeting such needs.
2. Sole proprietorships' legal life. Liberal, craft, commercial, industrial and agricultural professions may be exercised under the form of a sole proprietorship.



3. Different legal forms of partnerships in the countries of the International Union of Latin Notaries and in Anglo-Saxon countries. Comparison of their efficacy in economic terms.

XVI International Congress of Latin Notaries

1982 Lima (Peru)

1982

TOPICS

1. Nature and features of the means for producing documentary evidence in Latin and Anglo-Saxon legal systems. The genuine notarial act. The private instrument.
2. Advantages and downsides of each one in terms of protecting families' and groups' interests.
3. Social necessity of impartiality of the person drafting a contract.
4. Legal certainty of contracts.

XVII International Congress of Latin Notaries

1984 Florence (Italy)

1984

TOPICS

The notariat, a long-standing profession with a promising future

1. The notariat following its codification.
2. Characteristics of the notariat in today's world.
3. The notariat and its prospects to meet individual and collective needs.
4. The notariat's collaboration with international organizations to reach their goals.

XVIII International Congress of Latin Notaries

1986 Montreal (Canada)

1986

TOPICS

Influence of public law on private law:

- | | |
|----------------------------|-----------------------|
| 1. On family law | 2. On real estate law |
| 3. On the law of contracts | 4. On commercial law |

XIX International Congress of Latin Notaries

1989 Amsterdam (The Netherlands)

1989

TOPICS

1. The guarantee provided by the notary's intervention in the stages preceding the execution of a contract of sale.
2. The notary's role in the organization of legal entities.
3. The incidence of practice in the evolution of rights in rem.
4. Voluntary representation and representation of legal entities in international relationships.

XX International Congress of Latin Notaries***1992 Cartagena (Colombia)***

1992

TOPICS

1. The notary's intervention in the sphere of non-contentious jurisdiction.
2. The computer document and legal certainty.
3. Environmental protection and notarial practice.
4. The value and effect of a foreign document received by the notary.

XXI International Congress of Latin Notaries***1995 Berlin (Germany)***

1995

TOPICS

1. The Notariat's public and social function.
2. The notarial legal certainty, a tool for protecting consumers.
3. Modern reproduction medicine in family and succession law.
4. Modern legal techniques regarding notarial practice guarantees.

XXII International Congress of Latin Notaries***1998 Buenos Aires (Argentina)***

1998

TOPICS

1. The notary's role vis-à-vis State demands, mainly in administrative and tax fields.
2. Fundamental human rights and the notary's mission.
3. Notarial deontology vis-à-vis customers, colleagues and the State.

XXIII International Congress of Latin Notaries***2001 Athens (Greece)***

2001

TOPICS

1. The notarial activity aimed at preventing litigation:
Notarial advice and mediation as one of its instruments
2. The notarial activity as a source of law
3. Circulation of the notarial document and its effects as legal title in the legal transactions

INTERNATIONAL FORUM:**THE NOTARIAT AT THE DAWN OF THE NEW MILLENNIUM**

XXIV International Congress of the Latin Notaries

2004 Mexico City (Mexico)

2004

TOPICS

LEITMOTIV THE ADDED VALUE OF NOTARIAL ACTIVITY

1. The notary's impartiality: contractual guarantee
2. The notary and electronic contracts
3. The legal entity in national and international transactions

INTERNATIONAL FORUM:

CONTRACTS IN CIVIL LAW COUNTRIES AND COMMON LAW COUNTRIES

XXV International Congress of Notaries

2007 Madrid (Spain)

2007

TOPICS

LEITMOTIV THE NOTARIAT: WORLDWIDE INSTITUTION

1. The notarial document as a means of development of society.
2. The notarial activity in rural and urban environments





INSTITUTIONAL INFORMATION

1

CHAPTER



1.1 CONGRESS OF THE TURKISH UNION OF NOTARIES, ANKARA, TURKEY, JUNE 7-9, 2007

The Turkish Union of Notaries held the Congress of Notaries on June 7, 8 and 9, 2007. The event took place in the city of Ankara.



1.2 SEMINAR ON "NON-CONTENTIOUS JURISDICTION AND GROUNDS FOR DISABILITY. PARTICULAR ATTENTION TO THE NEW LEGISLATION", LAS PALMAS DE GRAN CANARIA, SPAIN, JUNE 13, 14 AND 15, 2007

On June 13, 14 and 15, a Seminar was held in the Assembly Room of the Bar Association of Las Palmas, in Plaza de San Agustín, Las Palmas de Gran Canaria, Spain, to discuss the following subject: "Non-contentious Jurisdiction and Grounds for Disability. Particular Attention to the New Legislation", organized by Fundación Aequitas, jointly with the General Council of the Judicial Power and the Notarial Association of Islas Canarias.

The Bar Association of Las Palmas and Obra Social de Caja Madrid collaborated in this event. The Seminar was directed by Félix Pantoja García, Member of the General Council of the Judicial Power, Blanca Entrena Palomero, Fundación Aequitas Coordinator, and Javier Laorden Ferrero, Member of the General Council of the Judicial Power.



THE PROGRAMME WAS AS FOLLOWS:

WEDNESDAY, JUNE 13:

9:30 AM: REGISTRATION

10:00 AM: **OPENING CEREMONY: BAR ASSOCIATION OF LAS PALMAS**
JUAN BOLÁS ALFONSO
 NOTARY. BOARD MEMBER OF FUNDACIÓN AEQUITAS
JAVIER LAORDEN FERRERO
 MEMBER OF THE GENERAL COUNCIL OF THE JUDICIAL POWER
JOSÉ MARQUEÑO DE LLANO
 PRESIDENT OF THE NOTARIAT GENERAL COUNCIL AND FUNDACIÓN AEQUITAS
ADVISER OF THE PRESIDENCY AND JUSTICE DEPARTMENT
ANTONIO CASTRO FELICIANO
 PRESIDENT OF THE HIGH COURT OF JUSTICE



11:00 AM: COFFEE BREAK

11:30 AM: OPENING CONFERENCE: **"BILL ON NON-CONTENTIOUS JURISDICTION**
PRESENTATION BY: CARMEN SÁNCHEZ CARAZO. COUNCIL MEMBER OF MADRID CITY HALL
"NON-CONTENTIOUS JURISDICTION AND NOTARIAL FUNCTION"
RAFAEL GÓMEZ-FERRER SAPIÑA
 NOTARY FROM VALENCIA
"NON-CONTENTIOUS JURISDICTION AND JUDICIAL FUNCTION"
LORENZO JESÚS DEL RÍO FERNÁNDEZ
 PRESIDENT OF THE PROVINCIAL COURT OF CADIZ
GROUP DISCUSSION
 5.00 PM: VISIT TO THE OCCUPATIONAL CENTER

THURSDAY, JUNE 14:

10:00 AM CONFERENCE: **"BASIC PRINCIPLES OF NON-CONTENTIOUS JURISDICTION: A PROPOSAL ORIENTED TOWARDS THE FUTURE"**
 MODERATOR:
JOSÉ ANTONIO RIERA ALVAREZ
 NOTARY FROM ARUCAS
 LECTURER:
ANTONIO FERNÁNDEZ DE BUJÁN Y FERNÁNDEZ
 PROFESSOR. SCHOOL OF LAW OF UNIVERSIDAD AUTÓNOMA DE MADRID
GROUP DISCUSSION

11:00 AM: COFFEE BREAK

11.30 HEURES ROUND TABLE: **"NON-CONTENTIOUS JURISDICTION OVER PERSONS"**
 MODERATOR: **OTILIA ZITO FONTÁN**
 NOTARY PUBLIC. PROVINCE OF BUENOS AIRES. ARGENTINA PARTICIPATION OF:
NURIA LÓPEZ-MORA GONZÁLEZ
 BOARD MEMBER OF FUNDACIÓN AEQUITAS. PROSECUTOR OF MADRID HIGH COURT OF JUSTICE
PÍO AGUIRRE ZAMORANO
 PRESIDENT OF THE PROVINCIAL COURT OF JAEN
CRISTÓBAL FABREGA RUIZ
 PROSECUTOR OF THE PROVINCIAL COURT OF JAEN
CARMEN GONZÁLEZ MADRID
 ASSISTANT TO THE GUARDIAN OF MINORS OF MADRID COMMUNITY

17.00 HEURES

ROUND TABLE: MODERATOR:**ANTONIO DORADO PICÓN** PRESIDENT OF THE NATIONAL ASSOCIATION OF JUDICIAL CLERKSPARTICIPATION OF: **FEDERICO CABELLO DE ALBA** JURADO NOTARY"PARENTAL RIGHTS AND DUTIES: CUSTODY AND ADOPTION" **JOSÉ LUIS UTRERA GUTIÉRREZ** JUDGE**"CHAPTER IX: INVOLUNTARY AMBULATORY TREATMENT OF INDIVIDUALS UNDER PSYCHIATRIC TREATMENT"****CARMEN ROMERO CERVILLA** FORENSIC DOCTOR FROM SEVILLA**JESÚS LÓPEZ-MEDEL** GRUPO POPULAR CONGRESSMAN AND VICEPRESIDENT OF THE DISABILITY COMMISSION OF THE HOUSE OF REPRESENTATIVES**GROUP DISCUSSION****FRIDAY, JUNE 15:**

10:00 AM:

ROUND TABLE:MODERATOR: **FRANCISCO VAÑÓ FERRE** CONGRESSMAN AND MEMBER OF THE DISABILITY COMMISSION OF THE HOUSE OF REPRESENTATIVESPARTICIPATION OF: **"DISABLED PERSONS AND NON-CONTENTIOUS JURISDICTION"** **FRANCISCO GONZÁLEZ RUIZ** MUTUALMINTO BE DETERMINED **GONZALO ARANDA ANTÓN** COUNSEL OF THE STUDIES AND REPORTS SERVICE. GENERAL COUNCIL OF THE JUDICIAL POWER**ANTONIO HERNANDO VERA**

BOARD MEMBER OF FUNDACIÓN AEQUITAS. CONGRESSMAN

TO BE DETERMINED**GROUP DISCUSSION**

11:20 AM:

COFFEE BREAK

12:00 PM:

CONFERENCE: **"SPECIALIZATION OF DISABILITY AND GUARDIANSHIP COURTS"****PILAR GONZÁVEZ VICENTE** JUDGE. COUNSEL OF THE GENERAL COUNCIL OF THE JUDICIAL POWER**GROUP DISCUSSION**

1.00 PM:

CLOSING CONFERENCE: "LEGAL SITUATION OF DISABLED PERSONS: PRESENT AND FUTURE"**CARLO MARÍN CALERO** NOTARY FROM GANDÍA**GROUP DISCUSSION**

1.30 PM:

READING OF CONCLUSIONS:

ROCÍO PÉREZ PUIG GONZÁLEZ COUNSEL OF THE ONGOING EDUCATION SERVICE.

GENERAL COUNCIL OF THE JUDICIAL POWER

ALMUDENA CASTRO-GIRONA MARTÍNEZ

NOTARY. DIRECTOR OF FUNDACIÓN AEQUITAS

CLOSING CEREMONY:**BAR ASSOCIATION OF LAS PALMAS****FAUSTINO GUTIÉRREZ-ALVIZ CONRADI**

MEMBER OF THE GENERAL COUNCIL OF THE JUDICIAL POWER

THE CONCLUSIONS WERE DRAFTED BY: CARMEN PÉREZ DE ONTIVEROS BAQUERO CIVIL LAW

PROFESSOR. LAS PALMAS DE GRAN CANARIA UNIVERSITY

MANUEL RUEDA DÍAZ DE RÁBAGO. NOTARY FROM VITORIA**JOSÉ ANTONIO RIERA ALVAREZ** NOTARY FROM ARUCAS. AEQUITAS DELEGATE IN CANARIAS.**GARCÍA BURGOS DE LA MAZA** COUNSEL OF THE GENERAL COUNCIL OF THE JUDICIAL POWER.**SEMINAR COORDINATORS: ALMUDENA CASTRO-GIRONA MARTÍNEZ**NOTARY. DIRECTOR OF FUNDACIÓN AEQUITAS. **ROCÍO PÉREZ-PUIG GONZÁLEZ** JUDGE. COUNSEL OF THE ONGOING EDUCATION SERVICE. GENERAL COUNCIL OF THE JUDICIAL POWER**COORDINATION SUPPORT: ANTONIO GÓMEZ-MARTINHO CRUZ**

FUNDACIÓN AEQUITAS

1.3 XXVII NATIONAL CONGRESS OF GERMAN NOTARIES, BRAUNSCHWEIG, GERMANY, JUNE 13-16, 2007

The XXVII National Congress of German Notaries was held on June 13-16, 2007, in the city of Braunschweig, Germany. There was a large attendance at the event, which was held in a friendly atmosphere.



1.4 VII CONGRESS OF RUMANIAN NOTARIES, JUNE 21-24, 2007, SINAIA, RUMANIA

The VII Congress of Rumanian Notaries was held on June 21, 22, 23 and 24, in the city of Sinaia.



1.5 II INTERNATIONAL NOTARIAL MEETING, ASSOCIATION OF NOTARIES OF PUERTO RICO, JUNE 23-25, 2007, SAN JUAN, PUERTO RICO

The Association of Notaries of Puerto Rico held the II International Notarial Meeting on June 23, 24 and 25, 2007, in San Juan, Puerto Rico.

The academic activities of the meeting were held in the annex to the Main Building, Building Luis A. Ferré, Salón Samuel R. Quiñones, located at Paseo de la Covadonga.

The topic "THE NOTARY'S FUNCTION IN SUCCESSION MATTERS" was addressed in the sessions. Several topics were discussed related to wills, their formalities and requirements vs. the testator's will, correction of defects, management of the estate, sales of shares in inheritances, transactions involving the assets of the estate, distribution of the decedent's estate and notarial ethics in terms of succession matters. Furthermore, emeritus international professors and notaries from Argentina, Mexico, Spain, Puerto Rico and other countries delivered lectures. There were also updates and comments by professors and notaries from Puerto Rico.

THE TOPICS DISCUSSED WERE AS FOLLOWS:

DAY 1: WILLS

1. INTRODUCTION: GENERAL CONCEPTS OF SUCCESSION LAW

CONCEPT OF LEGITIMATE PORTION OF FORCED HEIRS AND FREE DISPOSAL:

RIGHT TO INHERIT:

1. FORCED HEIRS
2. TESTAMENTARY HEIRS

II. FORMS OF INHERITANCE:

A. TESTAMENTARY INHERITANCE:

THE NUNCUPATIVE WILL:

REQUIREMENTS:

1. TESTATOR'S IDENTIFICATION
2. WITNESSES
3. EXPRESSION OF TESTATOR'S WILL
4. CONFORMITY AND EXECUTION
5. UNITY OF THE ACT
6. AUTHORIZATION

THE HOLOGRAPHIC WILL:

REQUIREMENTS:

1. HANDWRITTEN BY THE TESTATOR
2. SIGNED BY THE TESTATOR
3. NO SPECIFIC FORMALITY REQUIRED
4. NO WITNESSES REQUIRED
5. IT MUST BE SUBMITTED BEFORE THE COURT WITHIN A SPECIFIC TIME FRAME
6. IT MUST BE ENFORCED THROUGH JUDICIAL PROCEEDINGS
7. A NOTARY MUST INTERVENE IN THE FORMAL RECORDING OF THE WILL ONCE A JUDICIAL RESOLUTION IS PASSED CONFIRMING ITS VALIDITY

THE SEALED WILL:

1. NUMBER OF WITNESSES
2. NO REQUIREMENT THAT IT BE HANDWRITTEN BY THE TESTATOR
3. THE NOTARY'S INTERVENTION IS LIMITED TO THE PURELY FORMAL ASPECT OF THE ACT, WHICH INVOLVES THE FOLLOWING:
 - A. STAMPING A SEAL AND SEALING IT WITH WAX
 - B. IDENTIFYING THE FIVE WITNESSES
 - C. DRAWING UP THE CERTIFICATE
 - D. GIVING NOTICE TO THE REGISTRATION OFFICE OF POWERS-OF-ATTORNEY AND WILLS OF THE SUPREME COURT

WILLS GRANTED ABROAD:

1. FORMAL RECORDING
2. NEED FOR AN "EXEQUATUR" IF A SPECIALIZED COURT (PROBATE COURT) HAS PASSED A RESOLUTION ON THE MATTER

SPECIAL PROVISIONS IN WILLS:

1. THE EXECUTOR: POWERS AND LIMITATIONS
2. OMISSION OF LEGAL HEIRS AND SUBSTITUTION CLAUSES
3. PENALTY IMPOSED ON THE LITIGATING PARTY
4. MOST USUAL CLAUSES
5. TESTAMENTARY DISTRIBUTION OF THE DECEDENT'S ESTATE
6. TESTAMENTARY GUARDIANSHIP

- 7. TESTAMENTARY TRUSTS
- 8. TRANSFER OF THE BENEFICIARY'S RIGHTS
- 9. LIMITATIONS ON THE DISPOSAL OF INHERITED PROPERTY

THE PUERTO RICO REGISTRY OF WILLS: DUTY TO GIVE NOTICE WITHIN TWENTY FOUR HOURS AFTER THE GRANTING OF THE WILL.

CONSTRUCTION OF TESTAMENTARY PROVISIONS:

- A. THE TESTATOR'S WILL VS. OBSERVANCE OF FORMALITIES
- B. NULLITY VS. VOIDABILITY
- C. APPEARANCE AND KNOWLEDGE OF THE TESTATOR
- D. APPEARANCE AND KNOWLEDGE OF THE WITNESSES AND UNITY OF THE ACT
- E. CORRECTION OF DEFECTS PERTAINING TO THE FORM OF WILLS

III. INTESTATE INHERITANCE:

- 1) JUDICIAL DECLARATION OF HEIRS
- 2) PROCESSING BEFORE A NOTARY

IV. MIXED INHERITANCE:

- 1) JUDICIAL DECLARATION OF HEIRS (SEE SUBSECTION II (1) ABOVE)
- 2) PROVISIONS REGARDING DEVICES AND BEQUESTS

DISCUSSION OF THE SITUATION IN SEVERAL COUNTRIES:

GENERAL INTRODUCTION TO SUCCESSION MATTERS:

SPAIN: NOTARY RAFAEL GÓMEZ-FERRER

ARGENTINA: CRISTINA ARMELLA / CARLOS D'ALESSIO

MEXICO: NOTARY ALFONSO ZERMEÑO

PUERTO RICO: PROF. CANDIDA ROSA URRUTIA

Q&A SESSION

DAY 2: PROCEDURES FOR MANAGEMENT AND DISTRIBUTION OF THE ASSETS OF THE ESTATE:

PROCEDURES CONDUCTED BY THE NOTARY FROM THE TIME OF DEATH UNTIL THE DISTRIBUTION OF THE DECEDENT'S ESTATE:
SUCCESSION PROCEDURES:

I. INTRODUCTION AND INITIAL CONSIDERATIONS:

- 1. ESTABLISHMENT OF THE RULES GOVERNING THE TESTATOR'S MARRIAGE
 - A. MARITAL PROPERTY/ESTATE.
 - B. PREMARITAL AGREEMENT/ESTATE.
- 2. ESTABLISHMENT OF THE RULES GOVERNING THE SUCCESSION
 - A. LEGITIMATE SUCCESSION: DECLARATION OF HEIRS
 - B. TESTAMENTARY SUCCESSION:
 - C. MIXED SUCCESSION:

II. IDENTIFICATION OF HEIRS:

- 1. MINORS OR DISABLED PERSONS
- 2. NON-RESIDENTS: IDENTIFICATION OF AGENTS AND ATTORNEYS-IN-FACT
- 3. ABSENTEES
- 4. THE TESTATOR'S INTENTION
- 5. UNDER CONDITION PRECEDENT

III. SPECIFIC PROCEDURES IF A WILL HAS BEEN GRANTED:

1. PROCESSING OF TESTAMENTARY LETTERS

EXECUTORSHIP

ACCEPTANCE OF POSITION



NOTARIAL CERTIFICATION IN THE EVENT SUCH ACCEPTANCE HAS BEEN FILED

2. TESTAMENTARY DISTRIBUTION OF THE DECEDENT'S ESTATE

3. INTERVENTION OF AN ACCOUNTANT ENTRUSTED WITH THE DISTRIBUTION

IV. PROCEDURES APPLICABLE TO BOTH TYPES OF SUCCESSIONS:

A. ACCEPTANCE AND REPUDIATION:

1. PURE AND SIMPLE ACCEPTANCE
2. ACCEPTANCE WITH THE BENEFIT OF INVENTORY
3. REPUDIATION

B. MANAGEMENT OF THE ESTATE ASSETS:

1. JUDICIAL OR NON-CONTENTIOUS MANAGEMENT

WIDOW'S/WIDOWER'S LIFE INTEREST IN SPOUSE'S ESTATE:

COLLATION:

V. TAX PROCEDURES:

PROCEDURES RELATED TO THE PAYMENT OF CONTRIBUTIONS BY REASON OF DEATH:

(IN PUERTO RICO, PROCEDURES FILED WITH THE FINANCE DEPARTMENT)

1. LIEN GRANTED TO THE STATE - FREEZING OF ASSETS

1. ESTABLISHMENT OF A SHEET OF CONTRIBUTIONS PAYABLE ON THE DECEDENT'S ESTATE
2. PARTIAL OR TOTAL EXEMPTION SHEET OF CONTRIBUTIONS PAYABLE ON THE DECEDENT'S ESTATE AND OBTAINMENT OF AN EXEMPTION LETTER.

VI. CRITICISM OF THE PROCEDURES CURRENTLY IN FORCE IN EACH COUNTRY:

INTERNATIONAL PANEL:

ARGENTINA: CRISTINA ARMELLA - CARLOS D'ALESSIO

MEXICO: ALFONSO ZERMEÑO / JOSÉ EUGENIO CASTAÑEDA ESCOBEDO / JUAN JOSÉ PASTRANA ANCONA

SPAIN: RAFAEL GÓMEZ FERRER

DOMINICAN REPUBLIC: NELSON R. CASTILLO OGANDO

PUERTO RICO: DENNIS D. MARTÍNEZ / IGNACIO VILLARMARZO

QUESTIONS - COMMENTS -

DAY 3: PROCEDURES FOR MANAGEMENT AND DISTRIBUTION OF THE DECEDENT'S ESTATE (CONTINUED)

I. INTRODUCTION TO THE COMMUNITY OF HEIRS:

1. CONCEPT

A. PROVISIONS APPLICABLE IN PUERTO RICO

SPECIAL PROVISIONS - (PUERTO RICO)

- I. AN ORAL PURCHASE OF REAL PROPERTY IS VALID:
- II. A PURCHASE OF INTERESTS IN REAL PROPERTY IS A FORMAL AGREEMENT:

B. ACQUISITION OF REAL PROPERTY IN THE COMMUNITY

- I. REQUIREMENT TO REPORT THE PERCENTAGE ACQUIRED
- II. SPECIAL FORMALITIES AND WARNINGS (PUERTO RICO)

2. DECISION-MAKING PROCESS IN THE COMMUNITY OF HEIRS

3. TERMINATION OF THE COMMUNITY: CONVENTIONAL OR JUDICIAL TERMINATION

II. TRANSACTIONS:

1. SALE OF THE RIGHT TO RECEIVE AN INHERITANCE

2. SALE OF INTERESTS

3. CO-HEIRS' LEGAL RIGHT TO REVOKE TRANSFERS BY CO-HEIRS

4. SALE OF SPECIFIC INTERESTS IN REAL PROPERTY



5. SALE OF GOODS BY THE EXECUTOR**6. SPECIFIC CASE OF A SALE TO MINORS OR DISABLED PERSONS****A. MINORS:**

1. REPRESENTED IN THE DISTRIBUTION OF THE ESTATE BY THEIR FATHER OR MOTHER VESTED WITH PARENTAL RIGHTS AND DUTIES; NO JUDICIAL INTERVENTION OR APPROVAL SHALL BE REQUIRED.
2. IN THE EVENT OF A CONFLICT OF INTERESTS BETWEEN THE MINOR AND HIS FATHER, MOTHER OR GUARDIAN, A JUDICIAL COUNSEL SHALL BE APPOINTED.
3. ANY DISTRIBUTION OF A DECEDENT'S ESTATE INVOLVING MINORS, DISABLED PERSONS OR INTERESTED PARTIES SHALL, WHERE ASSETS OF THE ESTATE ARE ALLOCATED TO PAY ANY DEBTS WITH HEIRS OR THIRD PARTIES, BE SUBMITTED TO THE APPROVAL OF THE HIGH COURT. A PROSECUTOR MUST INTERVENE, BUT A JUDICIAL SALE SHALL NOT BE REQUIRED.

B. DISABLED PERSONS OR MINORS REPRESENTED BY A GUARDIAN.

THE GUARDIAN SHALL SECURE THE COURT'S AUTHORIZATION.

C. SALE OF PROPERTY

1. INVOLVING MINORS OR DISABLED PERSONS
 - A) EMANCIPATION:
 - B) PROCEDURE FOR THE SALE OF REAL PROPERTY INVOLVING MINORS OR DISABLED PERSONS.
2. JUDICIAL SALE
3. SPECIAL CONSIDERATION IN THE EVENT THE SELLER IS NOT A RESIDENT: WITHHOLDING OF PORTION OF THE PRICE TO PAY CONTRIBUTIONS.

III. DISTRIBUTION OF THE DECEDENT'S ESTATE:**1. CONVENTIONAL OR NON-CONTENTIOUS****2. TESTAMENTARY****3. JUDICIAL****4. CONVENTIONAL**

DRAFTING OF THE DEED OF DISTRIBUTION OF THE DECEDENT'S ESTATE

- I. INVENTORY AND VALUATION
- II. ESTABLISHMENT OF THE VALUE OF INTERESTS
- III. DIVISION AND AWARD
- IV. EXECUTION OF A DEED

5. EFFECT OF DISTRIBUTION OF THE DECEDENT'S ESTATE**6. RESCISSION OF DISTRIBUTION OF THE DECEDENT'S ESTATE****IV. REGISTRATION WITH THE REAL PROPERTY REGISTRY:****1. INTRODUCTION: SCOPE OF JUDGMENT POWERS****2. REGISTRATION OF THE RIGHT TO RECEIVE AN INHERITANCE: THE "STAGE OF PROCEEDINGS":**

1. WILLS
 - A. GRANTED IN PUERTO RICO
 - B. GRANTED OUTSIDE PUERTO RICO
 - C. HOLOGRAPHIC WILLS

2. DECLARATION OF HEIRS
3. SUPPLEMENTARY DOCUMENTS

3. TRANSACTIONS INVOLVING THE RIGHT TO RECEIVE AN INHERITANCE:

REQUIREMENT OF PRIOR DISTRIBUTION OF THE DECEDENT'S ESTATE:

4. TYPES OF DOCUMENTS EVIDENCING THE AWARDS:

1. WILL (TESTAMENTARY DISTRIBUTION OF THE DECEDENT'S ESTATE)
2. JUDGMENT (JUDICIAL DISTRIBUTION OF THE DECEDENT'S ESTATE)
3. DEED (NON-CONTENTIOUS DISTRIBUTION OF THE DECEDENT'S ESTATE)

5. INEQUALITY OF AWARDED VALUES.**6. ASPECTS TO BE CONSIDERED IN THE EVENT OF A SURVIVING SPOUSE.**

PARTICIPATION OF INTERNATIONAL NOTARIES AND PROFESSORS
TO COMPARE THE SITUATION OF THEIR RESPECTIVE COUNTRIES.

V. ETHICS APPLICABLE TO NOTARIES REGARDING SUCCESSION MATTERS:

1. APPLICABLE PROVISIONS: (PUERTO RICO)

- A. NOTARIAL LAW - LAW 75, DATED JULY 2, 1987
- B. CODE OF PROFESSIONAL ETHICS
- C. PROPOSAL OF A CODE OF NOTARIAL ETHICS

2. PROHIBITIONS IMPOSED ON THE NOTARY (BASED ON CONFLICT OF INTERESTS, KINSHIP) AND INCOMPATIBILITIES (PUBLIC OFFICE):

3. INCOMPATIBILITY WITH THE PRACTICE OF THE LAW: A PERSON MAY NOT BE THE NOTARY CERTIFYING THE WILL AND SUBSEQUENTLY ACT AS LAWYER IN A MATTER RELATED TO ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, ETC.

4. NOTARY'S RESPONSIBILITY:

- A. DISCIPLINARY/ADMINISTRATIVE: DUE TO THE CUSTODY OF THE BOOK OF NOTARIAL RECORDS
- B. CRIMINAL - NEW CODE - PROVISIONS:
- C. ECONOMIC: DAMAGES DUE TO NEGLIGENCE, TORT OR CONTRACTUAL BREACH.
- D. DAMAGES RESULTING FROM THE NULLITY OF A WILL FOR FAILURE TO OBSERVE THE RELEVANT FORMALITIES
- E. NON-COMPLIANCE WITH THE LAW OF REGISTRATION OF POWERS-OF-ATTORNEY

VI. CONCLUSIONS AND RECOMMENDATIONS



La Plata

Buenos Aires

1.6 I INTERNATIONAL SEMINAR ON THE GUARDIAN OF DISABLED PERSONS,

LA PLATA, BUENOS AIRES, ARGENTINA, JULY 20, 2007. FUNDACIÓN AEQUITAS.

Fundación Aequitas, the Spanish notariat's NGO, jointly with the House of Representatives and the Association of Notaries of the Province of Buenos Aires, collaborated in the "I International Seminar on the Guardian of Disabled Persons" held in the city of La Plata, on July 20; other collaborators included the House of Representatives of Spain, the Federal Council of the Argentine Notariat, the Argentine Notarial University, the Office of the Guardian of Disabled Persons of Extremadura, Aprosuba 3 from Badajoz and Obra Social de Caja Madrid. The seminar took place in the Meeting Hall of the House of Representatives of the Province of Buenos Aires.



FRIDAY, JULY 20:**MEETING HALL OF THE HOUSE OF REPRESENTATIVES OF THE PROVINCE OF BUENOS AIRES**

10:30 AM: RECEPTION AND REGISTRATION

11:00 AM: **OPENING CEREMONY:**

DEPUTY GOVERNOR MARIA GRACIELA GIANNETTASSIO

SPEAKER OF THE SENATE OF THE PROVINCE OF BUENOS AIRES

CONGRESSMAN ISMAEL PASAGGLIA

SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE PROVINCE OF BUENOS AIRES

NOTARY JORGE ALBERTO MATEO

PRESIDENT OF THE ASSOCIATION OF NOTARIES OF THE PROVINCE OF BUENOS AIRES

NOTARY ALMUDENA CASTRO-GIRONA MARTINEZ

GENERAL DIRECTOR OF FUNDACIÓN AEQUITAS

12.00 PM: **OPENING CONFERENCE: THE GUARDIAN OF DISABLED PERSONS**

EXPERIENCES IN EXTREMADURA (SPAIN) AND LA MATANZA (ARGENTINA)

MODERATOR: ADVISER OF THE ASSOCIATION OF NOTARIES OF THE PROVINCE OF BUENOS AIRES

LECTURERS: **JOSÉ LUIS DE PEDRO MORO** (SPAIN)

DIRECTOR OF THE GUARDIANSHIP AREA OF FUTUEX (FUNDACIÓN TUTELAR DE EXTREMADURA)

LECTURERS: GUARDIAN OF DISABLED PERSONS OF THE MUNICIPALITY OF LA MATANZA

1.30 PM: LUNCH

3.30 PM: **FIRST ROUND TABLE NECESSITY OF THE GUARDIAN OF DISABLED PERSONS**

MODERATOR: **ALMUDENA CASTRO-GIRONA MARTÍNEZ** DIRECTOR OF FUNDACIÓN AEQUITAS

LECTURER: **ROBERTO ALVAREZ SÁNCHEZ** (SPAIN) DIRECTOR OF APROSUBA 3 OF EXTREMADURA

LECTURER: REPRESENTATIVE OF MUNDO ASOCIATIVO ARGENTINO

4.30 PM: **SECOND ROUND TABLE LEGISLATIVE BILLS AND POSITIONS**

MODERATOR: **CONGRESSWOMAN KARINA ROCCA** (FRENTE PARA LA VICTORIA)

LECTURER: **CONGRESSMAN LUIS BRUNI** (RADICAL PARTY) PRESIDENT OF THE DISABILITY COMMISSION
HOUSE OF REPRESENTATIVES OF THE PROVINCE OF BUENOS AIRES

LECTURER: PRESIDENT OF THE CONSTITUTIONAL AFFAIRS COMMISSION

HOUSE OF REPRESENTATIVES OF THE PROVINCE OF BUENOS AIRES

LECTURER: **CONGRESSMAN FRANCISCO VAÑÓ** (POPULAR PARTY)

MEMBER OF THE DISABILITY COMMISSION

HOUSE OF REPRESENTATIVES OF SPAIN

1.7 IV INTERNATIONAL GUARDIANSHIP SEMINAR ON GUARDIANSHIP FOUNDATIONS ORGANIZED BY AEQUITAS;

ASSOCIATION OF NOTARIES OF THE PROVINCE OF BUENOS AIRES, ARGENTINA;

FEDERAL COUNCIL OF THE ARGENTINE NOTARIAT; FUNDACIÓN TUTELAR DE EXTREMADURA, SPAIN; NABIU CATALAN ASSOCIATION; MADRID AGENCY FOR ADULT GUARDIANSHIP; HOUSE OF REPRESENTATIVES OF SPAIN AND OBRA SOCIAL DE CAJA MADRID, JULY 21, 2007, MORÓN, PROVINCE OF BUENOS AIRES, ARGENTINA

On July 21, 2007Aequitas, jointly with the Association of Notaries of the Province of Buenos Aires, with the collaboration of the Federal Council of the Argentine Notariat, the Argentine Notarial University,

Fundación Tutelar de Extremadura -FUTUEX-, NABIU Catalan Association, Madrid Agency for Adult Guardianship and the House of Representatives of Spain, organized the "V INTERNATIONAL GUARDIANSHIP SEMINAR ON GUARDIANSHIP FOUNDATIONS" at the Morón Delegation of the Association of Notaries of the Province of Buenos Aires, Argentina. The Seminar was addressed to national, provincial and municipal public servants; lawmakers; judges; lawyers; notaries; prosecutors; doctors; psychologists; scholars; college students; associations and foundations. The Seminar was directed by Almudena Castro-Girona Martínez (Spain), Director of Fundación Aequitas.



provincia de buenos aires



PROGRAMME

SATURDAY, JULY 21:

10:30 AM: RECEPTION AND REGISTRATION

11:00 AM: **OPENING CEREMONY:**
SPANISH AGENCY FOR INTERNATIONAL COOPERATION
OTÍLIA ZITO FONTÁN FUNDACIÓN AEQUITAS ARGENTINA
JULIÁN MATÍAS CASTRO FUNDACIÓN AEQUITAS ARGENTINA
ALMUDENA CASTRO-GIRONA MARTÍNEZ (SPAIN) DIRECTOR OF FUNDACIÓN AEQUITAS
FRANCISCO VAÑÓ FERRE (SPAIN) CONGRESSMAN.
 MEMBER OF THE DISABILITY COMMISSION OF THE HOUSE OF REPRESENTATIVES OF SPAIN

11:30 AM: COFFEE BREAK

12:00 PM: **FIRST ROUND TABLE: "GUARDIANSHIP FOUNDATIONS"**
 MODERATOR **FRANCISCO VAÑÓ FERRE (SPAIN) CONGRESSMAN.**
 MEMBER OF THE DISABILITY COMMISSION OF THE HOUSE OF REPRESENTATIVES OF SPAIN
 LECTURER: **FRANCISCO JESÚS GONZÁLEZ RUIZ (SPAIN)**
 DIRECTOR OF FUNDACIÓN TUTELAR TAU

1.00 PM: **SECOND ROUND TABLE: "NECESSITY OF GUARDIANSHIP FOUNDATIONS"**
 LECTURER: **JESÚS MAS MAYORAL (SPAIN) DIRECTOR OF THE MADRID AGENCY FOR ADULT GUARDIANSHIP**

2.00 PM: **READING OF CONCLUSIONS: CLOSING CEREMONY:**
COMMISSION IN CHARGE OF DRAFTING CONCLUSIONS:
ANDREU J. MARTINEZ (SPAIN)
LAWYER. LEGAL COORDINATOR OF ACNABIU RESEARCH

1.8 IX SEMINAR OF THE SOUTHERN CONE NOVEL NOTARIAT, DEL ESTE, URUGUAY, AUGUST 30 AND 31, AND SEPTEMBER 1, 2007

The IX Seminar of the Southern Cone Novel Notariat (notaries who have practiced their profession for up to ten years) was held in the city of Punta del Este, Uruguay. The meeting took place at San Rafael Hotel, located at Parada 11, Playa Brava, in front of the sea.

The topics discussed were as follows:

TOPIC I - "Rules Governing Marital Property".

Central themes:

- a) The rules in force governing the phenomenon under analysis: marriage. Not only from a national law viewpoint, but also focused on the regulation of this matter by Private International Law.
- b) Property acquired during the marriage: applicable rules, who is to manage the same, form of acquisition, and formalities to be observed regarding their disposal, as well as possible exceptions. Basically, how relationships inherent in private law are regulated between the spouses: possibility for the spouses to enter into mutual agreements, nature of such agreements, consequences of failure to comply with the legislation in force.
- c) Ways to terminate the marriage bond and effect, based on the existing rules governing marital property.
- d) Lastly, cohabitation. Solutions of Comparative Law, the solutions currently proposed in our field: advantages and criticism.

TOPIC II - "Advanced Directives. Living Will. Self-guardianship".

1. Provisions relating to marriage in the Positive Law in force. Legislation governing marriage under national and international law. Concept of marital domicile.
2. Rules governing marital property. Possibility of previous arrangements. Possibility of execution of contracts between the spouses. Acts for disposing of marital property.
3. Dissolution and liquidation of the marital partnership. Divorce
4. Rules applicable to cohabitation

TOPIC III - Panel: "Mediation: a Tool for Peace".

PROGRAMME

THURSDAY, AUGUST 30, 2007	FRIDAY, AUGUST 31, 2007
08:30 AM - 10:30 AM REGISTRATION AND CHECK-IN OF ATTENDEES 10:30 AM - 11:00 AM OPENING CEREMONY 11:00 AM - 12:30 PM DISCUSSION OF TOPIC I 12:30 AM - 2:00 PM LUNCH 2:00 PM - 4:00 PM CONTINUED DISCUSSION OF TOPIC I 4:00 PM - 4:15 PM COFFEE BREAK 4:15 PM - 7:00 PM CONTINUED DISCUSSION OF TOPIC I 9:30 PM WELCOME DINNER	09:00 AM - 10:30 AM DISCUSSION OF TOPIC II 10:30 AM - 10:45 AM COFFEE BREAK 10:45 AM - 12:30 PM CONTINUED DISCUSSION OF TOPIC II 12:30 AM - 2:00 PM LUNCH 02:00 PM - 3:30 PM CONTINUED DISCUSSION OF TOPIC II 3:30 PM - 3:45 PM COFFEE BREAK 3:45 PM - 7:00 PM PANEL 10:00 PM DINNER SHOW
SATURDAY, SEPTEMBER 1, 2007	
11:00 AM - 12:00 AM CLOSING PLENARY - CONCLUSIONS 12:00 PM - 12:30 PM CLOSING CEREMONY 12:30 PM - 2:30 PM FAREWELL LUNCH	

1.9 MEETING OF THE COMMISSION OF EUROPEAN AFFAIRS (CEA),

VERSAILLES, FRANCE, SEPTEMBER 14 AND 15, 2007

The Commission of European Affairs (CAE) will meet in Versailles, France, on September 14 and 15.



PROGRAMME

SEPTEMBER 13

ATTENDEES' ARRIVAL AND CHECK-IN AT THE HOTELS.

7:00 PM WELCOME COCKTAIL AT PALAIS DU GRAND LARGE

SEPTEMBER 14

9:00 AM RECEPTION OF ATTENDEES AT PALAIS DU GRAND LARGE, SALLE DU GRAND LARGE

9:15 AM OPENING OF THE COMMISSION OF EUROPEAN AFFAIRS

10:30 AM COFFEE BREAK

10:45 AM RESUMPTION OF ACTIVITIES

12:30 PM LUNCH AT PALAIS DU GRAND LARGE

2:00 PM RESUMPTION OF ACTIVITIES

3:30 PM COFFEE BREAK

3:45 PM RESUMPTION OF ACTIVITIES

5:30 PM CONCLUSION OF ACTIVITIES.

8:00 PM EXCEPTIONAL SOIRÉE AT THE MALOUMIÈRE OF THE CITY. RECEPTION BY THE OWNERS OF THIS MAGNIFICENT PALACE. VISIT TO THE PARK, THE CHAPEL, THE DOVECOT AND THE MALOUMIÈRE. DRINKS AT THE PARK AND IN THE HALLS WITH TAPESTRY DEPICTING PIZARRO'S ARRIVAL TO THE INCAS' TERRITORY, CONSIDERED TO BE A HISTORIC MONUMENT. DINNER INSIDE A STRUCTURE MOUNTED ON THE GRASS, IN FRONT OF THE MALOUMIÈRE

SEPTEMBER 15

9:00 AM RESUMPTION OF ACTIVITIES, PALAIS DU GRAND LARGE - SALLE DU GRAND LARGE

10:30 AM COFFEE BREAK

10:45 AM RESUMPTION OF ACTIVITIES

12:30 PM LUNCH AT PALAIS DU GRAND LARGE

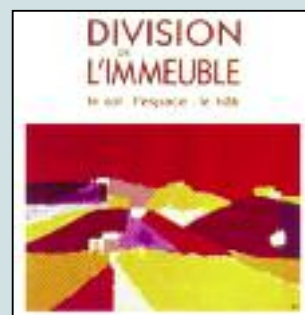
2:00 PM MEETING ADJOURNMENT

3:00 PM ATTENDEES' FAREWELL

1.10 103rd CONGRESS OF FRENCH NOTARIES, LYON, FRANCE, SEPTEMBER 23-26, 2007

The Congress was held in the city of Lyon, France, on September 23, 24, 25 and 26, 2007. It took place at the Palace of Congress.

**The following topics were discussed,
in relation to real property:**



- Controlled Division of Land;
- Conventional Organization of Space;
- Division of Real Estate (BÀTI); and
- Duration of Divided Real Estate.

The issue involving building division was discussed: the ground, the space, the division of a large house into apartments, among other topics. In this Congress, notaries comprehensively discussed the complex issues related to the division of real estate, whether in terms of the ground, the space above the plinth level, a building to be constructed or a centenary building. The event gathered four commissions which had carried out studies for almost two years in order to bring to light the practical difficulties encountered by Real Estate Law experts given the complexity of the specific situations to be dealt with, which are left unregulated, or the contradictions existing among the texts in force, as well as the precautions to be taken by buyers, sellers, promoters or people responsible for a local community. The congress discussed how plot of lands may be divided and how spaces are to be divided in order to ensure legal certainty; lastly, the issue of good town planning was also considered, i.e., seeing to cohabitation within the same space of public and private interests, local communities and companies, public utilities and private owners, inhabitants and merchants.



1.11 UINL MEETINGS, SEPTEMBER 30, OCTOBER 1-4, 2007, MADRID, SPAIN

The UINL meetings will be held in Madrid, Spain, according to the following schedule:



SEPTEMBER 30: UINL COMMISSIONS - UINL EXECUTIVE COMMITTEE

OCTOBER 1: UINL PERMANENT COUNCIL

OCTOBER 2-3: MEETING OF UINL MEMBER NOTARIATS

OCTOBER 4: UINL PERMANENT COUNCIL (continued)

PROGRAMME	PROGRAMME FOR ACCOMPANYING PERSONS
SUNDAY, SEPTEMBER 30: EXECUTIVE COMMITTEE. COMMISSIONS. 8:00 PM: WELCOME COCKTAIL (HOTEL SOFITEL MADRID CAMPO DE LAS NACIONES). MONDAY, OCTOBER 1: PERMANENT COUNCIL. 8:00 PM: ACADEMIC CEREMONY FOLLOWED BY A COCKTAIL. TUESDAY, OCTOBER 2: MEETING OF UINL MEMBER NOTARIATS 9:00 PM: GALA DINNER AT THE FORMER CASINO DE MADRID (C/ ALCALÁ 15). WEDNESDAY, OCTOBER 3: MEETING OF UINL MEMBER NOTARIATS THURSDAY, OCTOBER 4: PERMANENT COUNCIL.	SUNDAY, SEPTEMBER 30: 8:00 PM: WELCOME COCKTAIL (HOTEL SOFITEL MADRID CAMPO DE LAS NACIONES). MONDAY, OCTOBER 1: FULL DAY TRIP TO SEGOVIA 8:00 PM: ACADEMIC CEREMONY FOLLOWED BY A COCKTAIL. TUESDAY, OCTOBER 2: HALF-DAY GUIDED TOUR: "UNKNOWN PLACES AND MUSEUMS IN MADRID". 9:00 PM. GALA DINNER AT THE FORMER CASINO DE MADRID (C/ ALCALÁ 15).

1.12 MEETING OF THE PERMANENT NOTARIAL OFFICE OF INTERNATIONAL EXCHANGE - ONPI - MADRID, SPAIN, SEPTEMBER 30, 2007



On Sunday September 30, at 4:00 pm, the Permanent Notarial Office of International Exchange - ONPI - will hold its Plenary Meeting at the Palacio Municipal de Congresos, Campo de la Naciones, in the city of Madrid, Spain.

1.13 XXV INTERNATIONAL NOTARIAL CONGRESS, MADRID, SPAIN, OCTOBER 3-6, 2007

The XXV International Notarial Congress will be held in the city of Madrid, Spain, on October 3-6, 2007, under the slogan: "The Notariat: Worldwide Institution". The event will be held in the Palacio de los Congresos, Campo de las Naciones, of this city.



TOPICS:

I- "The Notarial Document as a Means of Development of Society".

II- "The Notarial Activity in Rural and Urban Environments".

1.14 XIX COLLOQUIUM OF NOTARIATS FROM CENTRAL EUROPEAN COUNTRIES, KESZTHELY, HUNGARY, NOVEMBER 15, 16 AND 17, 2007

The XIX Colloquium of Notariats from Eastern European countries will be held in Keszthely, Hungary. The meeting will take place on November 15, 16 and 17, and a large number of notariats from those countries will be attend.



1.15 XIX CONGRESS OF AFRICAN NOTARIES, NOVEMBER 17-20, 2007, ALGIERS, ALGERIA

Algeria, a recently-added member of the International Union of Notaries, will be host to the next Congress of African Notaries, on November 17, 18, 19 and 20, 2007. The meeting will be held in EL AURASSI Hotel in the city of Algiers and was organized by the National Chamber of Notaries of Algeria.



1.16 VII IBERIAN AMERICAN CONFERENCE ON FAMILIES, MEXICO D.F., MEXICO, NOVEMBER 26-29, 2007



The VII Iberian American Conference on Families will be held in Mexico D.F. from November 26 through 29, 2007, organized by Fundación Aequitas (General Council of Spanish Notariat), together with the Red Iberoamericana de Trabajo con las Familias (Chile), the National Notary Association of Mexico, the International Union of Notaries (Mexico), Companies' Social Action Fair (Feria de Acción Social de la Empresa), Valencia Fair (Spain) and the Organization for Families (Familis) (Canada).

INVITATION TO THE VII IBERIAN AMERICAN CONFERENCE ON FAMILIES

A meeting among the Public Sector, the Private Sector and Civil Society to work in a coordinated manner in the framework of the Iberian American Community to promote human development and international cooperation for the benefit of the well-being of families and a more human and fairer social order.

MEXICO D.F. NOVEMBER 26-29, 2007

Escuela Libre de Derecho

Dr. Vertiz, 12. Esquina Arcos de Belén Colonia Doctores 06720 Mexico D.F.

ORGANIZED BY

RED IBEROAMERICANA DE TRABAJO CON LAS FAMILIAS - Chile

FUNDACIÓN AEQUITAS (GENERAL COUNCIL OF SPANISH NOTARIAT) - Spain

NATIONAL NOTARY ASSOCIATION OF MEXICO - Mexico

INTERNATIONAL UNION OF LATIN NOTARIES - Mexico

COMPANY'S SOCIAL ACTION FAIR (FERIA DE ACCIÓN SOCIAL DE LA EMPRESA). VALENCIA FAIR - Spain

WORLD ORGANIZATION FOR FAMILIES (FAMILIS) - Canada

SUBJECT MATTER

SOLIDARITY IN IBERIAN AMERICA

HUMAN DEVELOPMENT

VULNERABLE FAMILIES. INDIGENOUS PEOPLES

CORPORATE SOCIAL RESPONSIBILITY

COMPANY'S SOCIAL ACTION

INVITATION TO PARTICIPATE AND COLLABORATE EXTENDED TO

INTERNATIONAL ORGANIZATIONS

GOVERNMENTS, EMBASSIES, PUBLIC ADMINISTRATIONS AND ENTITIES

COMPANIES, BUSINESS ORGANIZATIONS, CHAMBERS OF COMMERCE AND FAIRS

UNIVERSITIES, PROFESSIONAL ASSOCIATIONS AND BUSINESS SCHOOLS

NGO's, COORDINATION PLATFORMS AND NETWORKS

CHURCHES

MEDIA

ORGANIZING COMMITTEE**PRESIDENT**

José María Álvarez del Manzano
President of Madrid Fair (IFEMA)

GENERAL SECRETARY (COORDINATOR)

Juan Reig Martín

SCIENTIFIC COMMITTEE**PRESIDENT**

Miguel Rodríguez-Piñero y Bravo-Ferrer
Lecturer. Permanent State Councilor. ILO Expert.
Instituto Universitario de la Familia
Cátedra Javier Benjumea de Ética Económica Empresarial
Universidad Pontificia de Comillas

TABLE OF CONTENTS**I. IBERIAN AMERICAN SUMMITS OF HEAD OF STATE AND GOVERNMENTS.****II. IBERIAN AMERICAN CONFERENCES ON FAMILIES.****III. VII IBERIAN AMERICAN CONFERENCE ON FAMILIES.****INTERPRETATION KEYS AND ABRIDGED TOPIC LIST:**

1. WHERE IS HUMANITY GOING?
2. WHERE IS IBERIAN AMERICA GOING?
3. HUMAN DEVELOPMENT AS THE PRINCIPAL SUBJECT MATTER OF THE VII IBERIAN AMERICAN CONFERENCE ON FAMILIES
4. 2005 UNITED NATIONS REPORT ON HUMAN DEVELOPMENT. INTERNATIONAL COOPERATION AT A CROSSROAD.
5. 2006 UNITED NATIONS REPORT ON HUMAN DEVELOPMENT. WATER AS THE BASIS FOR HUMAN PROGRESS.
6. THESE REALITIES DEMAND A STRUCTURAL CHANGE.
 - 6.1. THE ROLE OF THE STATE AND MUNICIPALITIES.
 - 6.2. THE ROLE OF THE COMPANY.
 - 6.3. THE ROLE OF NOG's AND SOLIDARITY NETWORKS.
 - 6.4. THE ROLE OF THE FAMILY. VULNERABLE FAMILIES AND INDIGENOUS PEOPLES.
7. LEADERSHIP AND FIGHT AGAINST CORRUPTION.

IV. GENERAL PURPOSES.**V. SPECIFIC PURPOSES.****VI. (PROPOSED) PROGRAMME. PARTICIPATION. REGISTRATION BULLETIN.****III. THE FOLLOWING ARE THE MAIN INTERPRETATION KEYS:**

1. The conference as a meeting opportunity among the Public Sector, the Private Sector and Civil Society to work in a coordinated manner in the framework of the Iberian American Community.
2. Inequities and injustice in the Latin American social reality cause exclusion, suffering and pain to persons and families.
3. The notion of Human Development in a context of liberty and opportunities as a means to attain a life quality beyond the mere satisfaction of basic needs.
4. The notion of International Cooperation for development, as a challenge for the Public Sector, the Private Sector and Civil Society.
5. The Global Pact for the defense of human rights, labor rights, environment and anti-corruption policies; and the Millennium Goals for 2015, approved by the United Nations Assembly.
6. The need for a structural change to modify the State's actions, the Economy and Civil Society in the search for a more human and fairer social order.

7. The role of the State in such transformation, based on the social policies of Central, Regional and Local Governments to assist vulnerable families.
8. The role of the company in the search for a new society model, based on the notion of the Corporate Social Responsibility.
9. The role of the family, through NOG's and Solidarity Networks, upon disclosure of their social initiatives and programs for the benefit of families and the community.
10. Creation of Solidarity Networks, promoting and encouraging their coordination to make a better use of synergies.

IV. GENERAL PURPOSE: To cooperate in achieving the Millennium Goals approved by the United Nations General Assembly:

- Eradicate extreme poverty and hunger.
- Achieve universal primary education.
- Promote gender equality and empower women.
- Reduce child mortality.
- Improve maternal health.
- Combat HIV/AIDS, malaria and other diseases.
- Ensure environmental sustainability.
- Develop a global partnership for development.

V. SPECIFIC GOALS:

- Investigate the economic, social and cultural reality of the Iberian American Community.
- Learn about the level of compliance with the World Pact and the Millennium Goals for 2015 approved by the UN.
- Diagnose vulnerability situations and factors in families, including their consequences.
- Learn about the family and labor situation of Latin American women and the application of the equal opportunity principle in the social context.
- Contribute to the principle of Corporate Social Responsibility and promote companies' social actions.
- Promote and schedule joint social action programs of Governments, Companies, NOG's, Universities and International Organizations.
- Highlight the role of Municipalities, through their social policies, in the well-being of families.
- Create a Permanent Secretary to ensure the continuous compliance with the purposes of Iberian American Conferences.
- Promote the Iberian American Institute of Business Excellence and Human Development (Investigation, Education, Advice to Small and Medium Size Companies -PYMES- in the Implementation of Corporate Social Responsibility).
- Promote the Iberian American Institute of Family Sciences (Investigation, Education, Advice, Mediation and Assistance) in family situations.
- Organize the VIII Iberian American Conference on Families.

DAY 26 (MONDAY)

09.00 AM. REGISTRATION AND DISTRIBUTION OF DOCUMENTS.

10.00 AM. OPENING CEREMONY.

1ST LECTURE: "FAMILY AS THE BASIS OF A PERSON AND SOCIETY. ITS ROLE IN HUMAN AND SOCIAL DEVELOPMENT. STRENGTHS AND WEAKNESSES."

11.30 AM. COFFEE BREAK.

12.00 PM. FORUM ON MEXICAN FAMILIES.

REPORT OF THE NATIONAL INTEGRAL SYSTEM FOR FAMILY SUPPORT (DIF).

2.00 PM. LUNCH.

3.30 PM. SIMULTANEOUS ROUND TABLES.

1. PEOPLE AND FAMILY.
2. VULNERABLE FAMILIES.
3. GENDER EQUALITY AND WOMEN EMPOWERMENT. RECONCILIATION OF LABOR AND FAMILY LIFE.
4. INDIGENOUS PEOPLES. RIGHTS AND FREEDOM.

5.30 PM. END OF DAY.

7.30 PM. CONCERT AT THE FORMER CORPUS CHRISTI CHAPEL.

DAY 27 (TUESDAY)

10.00 AM. LECTURE.

2ND LECTURE: "HUMAN DEVELOPMENT. GLOBAL PACT AND MILLENNIUM GOALS APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS. LEVEL OF COMPLIANCE AND FAMILY-RELATED PROPOSALS."

11.30 AM. COFFEE BREAK.

12.00 PM. SIMULTANEOUS ROUND TABLES.

5. SOCIAL POLICIES TO SUPPORT FAMILIES. (OF CENTRAL AND REGIONAL GOVERNMENTS).
6. LOCAL GOVERNMENTS. HUMAN AND SOCIAL DEVELOPMENT.
7. FAMILY AND SOCIAL SECURITY.
8. SOCIAL ECONOMY COMPANIES.

2.00 PM. LUNCH.

4.00 PM. VISIT TO A TOURIST ATTRACTION.

DAY 28 (WEDNESDAY)

10.00 AM. LECTURE.

3RD LECTURE: "THE ROLE OF THE COMPANY IN A NEW ECONOMIC AND SOCIAL ORDER. CORPORATE SOCIAL RESPONSIBILITY."

11.30 AM. COFFEE BREAK.



12.00 PM. SIMULTANEOUS ROUND TABLES.

9. COMPANIES' SOCIAL ACTION PROGRAMS.

10. NOG'S PROGRAMS

2.00 PM. LUNCH.

3.30 PM. ROUND TABLES 9 AND 10 (CONTINUATION).

9. COMPANIES' SOCIAL ACTION PROGRAMS.

10. NOG'S PROGRAMS

5.30 PM. END OF DAY.

8.30 PM. MEXICAN FOLKLORIC DANCES. PALACIO DE BELLAS ARTES.

DAY 29 (THURSDAY)

10.00 AM. CONCLUSIONS OF ROUND TABLES.

11.30 AM. COFFEE BREAK.

12.00 PM. CLOSING CEREMONY.

4TH LECTURE: "THE DEMOCRATIC CHALLENGE. THE STATE AS A GUARANTOR OF THE COMMON WELFARE IN THE NEW WORLD ORDER."

"PUBLIC STATEMENT OF THE CITY OF MEXICO AS REGARDS FAMILY."

2.00 PM. CLOSING CEREMONY LUNCH. SALÓN REAL DEL CASINO DE ESPAÑA.
IBERIAN AMERICAN BROTHERHOOD PARTY.



CURRENT EVENTS

2

CHAPTER

2.1 SPAIN: FAMILY CHARTER (PROTOCOLO FAMILIAR)

This code of conduct governs the relationship among the owners of a company as regards its management and operation. It may also consist of an agreement to avoid potential conflicts among family members and set internal rules. It derives from the "shareholders' agreement", a legal tool used in the United States since the 60's to prevent ownership, succession and governance issues in family businesses.

This legal concept was adopted in Spain, as well as the registration process thereof, under Act 7/2003 of the New Enterprise Limited Company. On February 9, 2007, the Council of Ministers approved the Royal Decree on disclosure of Family Charters. According to this decree, neither the execution nor the disclosure of Family Charters is mandatory. The Royal Decree has effects only on close business companies and admits, always voluntarily, the registration at the Business Register of any agreements executed by the members among themselves or with third parties, if such registration is in the interests of the company.

The contents of a Family Charter are open and flexible to cover several aspects: family members who sign the charter, family generations and branches, the company's history and generational background, its values and business tradition, administration bodies, terms and conditions for incorporation to the family company, dividend policy, marriage articles, testamentary policy, etc. The Notary has an essential role in this issue due to his or her involvement in the charter registration at the different registers: Business, Real Property, Self-Help, Last Will and others.

Source: Magazine "Escritura Pública" No. 45 May-June 2007

2.2 EUROPEAN UNION: OLAF



*French acronym
for the European
Anti-Fraud Office*

The purpose of OLAF, which cooperates closely with the authorities of the Member States, is to protect the financial interests of the European Union, combat fraud, corruption and all other illegal activities, including misconducts in European institutions with

financial consequences. It investigates fraud or the misuse of funds of the European Union, and its officers have ample powers to investigate civil crimes and exercise in-situ controls in the companies' offices of the Member States and other countries.

As regards criminal investigations, the authority to conduct the same must be assigned by the Member States to OLAF's officers. The Director-General is expressly prohibited from asking or accepting instructions from any government or institution, including the Commission, in order to guaranty the Office's impartiality and independence.

The most common forms of fraud are: deviation of resources from the European Union Structural Funds used to finance agriculture and social projects, the Union regional development, as well as the evasion of taxes and customs duties on cigarettes.

Applicable sanctions may consist of disciplinary actions, administrative or financial penalties or changes in legislation. If the case must be decided by the courts, the matter is submitted to the corresponding national authority. In addition, since October 2004, OLAF is in charge of the European Technical and Scientific Centre (ETSC), an entity created for the analysis of counterfeit euro coins. The most counterfeited coin is the 2-euro with the German national side (euro coins have a common side and a national side). Counterfeit euro coins are found in Germany, Austria, Belgium and The Netherlands.

Source: Official Website of the EU.

2.3 UNESCO: INTERNATIONAL BIOETHICS COMMITTEE



The International Bioethics Committee, created in 1993, is a body of thirty six independent experts in charge of promoting the global reflection on the progress of life sciences and their applications in order to ensure respect for human dignity and freedom. It is devoted to heightening awareness of the ethical issue related to scientific and technological advances to guide States in their lawmaking efforts and formulation of policies in the field of bioethics.

To such end, in May 2007, the Regional Centre for Documentation and Research on Bioethics was established at Egerton University, the oldest institution of highest education of Kenya. At the same time, such centre held its first meeting in an African country -Nairobi, Kenya- to evaluate the perspectives of bioethics in such continent and discuss two principles of the Universal Declaration on Bioethics and Human Rights: consent and social responsibility in health matters.

Source: UNESCO

2.4 VIETNAM: NOTARIAL ACT OF FRENCH INFLUENCE

The Notarial Act of Vietnam became effective on July 1, 2007, after being adopted by the Vietnamese



National Assembly on November 29, 2006. This Act is a result of a legal cooperation between France and Vietnam. According to such Act, in addition to the existing notary offices in which notaries are public officials, private offices may be created and administered by free-lance notaries, public officials, who will have the same powers and authority as the above: the issuance of authentic enforceable documents with value as evidence. In addition, such notaries will be exclusively responsible for the issuance of documents related to real property transactions, creation of mortgages and other proceedings,

such as the authentication and deposit of wills, conventions on the distribution of a decedent's estate and statements of acceptance or waiver of a decedent's estate. According to the Act, the notary shall be held liable for any damages caused by such notary's malpractice, with the imposition of administrative or criminal sanctions, as applicable.

Source: Notaires Vie Professionnelle No. 263

2.5 "PHISHING": A TYPE OF DIGITAL THEFT

The Internet scam known as "Phishing" consists in duplicating a website to trick the user into believing that he/she is on an authentic site. It is commonly used in websites of first line banks, by asking the user to update the login information. Generally, the user receives an e-mail, asking them to update their account information, which imitates the design of the bank's website, including forms. If the user acts as requested, the Internet criminal uses such user's identity to operate on-line.

Phishing is also the act of fraudulently acquiring, by misleading actions, personal data such as passwords or credit card information, social security numbers, identity documents, by someone who pretends to be a trustworthy person who effectively needs to request such information on an e-mail resembling the authentic e-mail, instant messages or any other way of communication. An Anti-Phishing Working Group has been established in the United States to combat this form of fraud, the sophistication and frequency of which is continuously increasing.



Source: Magazine "Escritura Pública".

2.6 UNIDROIT PRINCIPLES



The UNIDROIT principles of international commercial contracts were established throughout a period of 25 years. The principles were first published in 1994, as a result of a joint work of jurists of over 30 countries, and the preamble was expanded in 2004.

The legal systems and legislations of the different countries caused legal uncertainty in international commercial contracts, since the parties to such contracts were hardly aware of the different rules in force in all countries. Due to such situation, such parties were forced to hire experts to interpret the international legal systems, which resulted in increased transaction costs that were practically impossible to afford by medium and small size companies (PYMES), given their limited budget. Neutral legal tools were necessary, which caused UNIDROIT to establish the principles of international commercial contracts. It took some time for these principles to be widely accepted by the international business community, partly due to the reduction of costs associated with these simple rules and to the related sense of justice and neutrality thereof. Thus, commercial contracts may include a clause establishing that the contract will be governed by the UNIDROIT principles and, in a supplementary manner, by any local legislation.

Under the Rome I Proposal dated December 15, 2005, a contract may be governed by Principles or Rules, without any national law being necessarily mandatory. Notwithstanding the foregoing, it is established that, in addition, the general principles of the chosen national law shall be applied as regards the traditional conflict of law rules. This proposal is important because it takes the UNIDROIT principles for what they are: an internationally accepted set of principles or rules, and the parties to an international contract are free to determine if such contract will be governed by such principles. The limit of

application of the UNIDROIT principles is the applicable national law and the European laws that the parties are required to comply with, since the principles cannot be used to ignore such mandatory rules.

Notary Mariano Miró

BRIEF NEWS

PUERTO RICO:

SSOLE REGISTER OF ATTORNEYS AND NOTARIES



A Sole Register of Attorneys was established to have a central digital database of the attorneys and notaries authorized by the Supreme Court. As regards notaries, this Register will include their digital signatures and seals, enabling the electronic registration of notarial indexes, changes of addresses, authorization requests to transfer books of notarial records, among other formalities.

This Register is called UNIREN and was created by the Judicial Branch.

ENVIRONMENT:

WHO ALERT AND EUROPEAN UNION ACTION PROGRAMME

The World Health Organization (WHO) has alerted that the impact of environmental factors may be more serious on children than adults, since the existing contaminants in water and air, the pesticides in the food and other environmental threats upset the delicate organism of children and may affect the function of their developing organs. It was also informed that the effects of a single contaminant may vary depending on the age of the minor, that is, the consequences would not be the same in a fetus still in the mother's womb than in an older child. A WHO expert stressed the importance of this information for public policy-makers and researchers.

The European Union, in turn, is preparing an action programme called "Environment 2010: Our Future, Our Choice", which contemplates the following:

- Climate change and global warming
- Nature and wildlife
- Environment and health issues
- Natural resources and waste management.

Other important areas are also contemplated by means of strategies regarding atmospheric pollution, waste management, recycling, marine environment, soil, pesticides, the use of resources and urban



environment and, especially, the concerns for the contamination effects in the people's health by means of an European Action Plan for Health and Environment (2004-2005).

In turn, the European Environment Agency, located in Copenhagen, is in charge of the environmental situation control and the early detection of future problems. In addition, it provides information for political heads to make decisions, promotes best protection practices and environment technologies, and informs the results of investigations regarding the environment.

Source: UN and European Union.

SPAIN:

ADOPTION OF EMBRYOS AND NOTARY'S INVOLVEMENT



The 2006 Assisted Reproduction Act provides that cryopreserved embryos obtained after in vitro fertilization may also be donated to other women, for investigation purposes, preserved for future implantation into the biological mother or else destroyed. Under such Act, the donation of gametes and pre-embryos for the purposes authorized is a non-remunerative, formal, confidential agreement between the donor and the authorized center. Before the agreement can be formalized, the donor should have been informed of the objectives and consequences of donation (adoption by another couple), no consideration is to be paid and the donation is to be anonymous. Donors must be of age (in the case of men, not older than 50 years old, and in the case of women, not older than 35 years old), in good psychophysical health and have full mental capacity, must not suffer from any genetic or hereditary disease or metabolic disorders, and the number of children procreated by the donor must not exceed six.

Pursuant to this Act, for a person to use the gametes or pre-embryos in the future, such person's consent must be notarized by a notary public, by means of a public deed or will. The notary, in turn, must certify that the person has full mental capacity and understands the decision made as well as its legal effects.

Source: Magazine "Escritura Pública" No 45 May-June 2007.

FRANCE:

MASTER FILE OF LAST WILLS AND TESTAMENTS



Since May 15, 2007, all individuals may access the on-line Master File of Last Wills and Testaments. This File includes the names and civil status information of all persons who have made their last will and testament, its registration date and the name of the notary involved. Under no circumstance are the contents of the last wills and testaments revealed; instead, the individual is referred for consultation to a public official -a notary- with whom the notarial document has been deposited.

Source: Notaires Vie professionnelle No. 263

CHILE:

ACT 20,190/2007



The electronic Special Chattel Mortgage Register was created by Act 20,190 to unify prior special pledges and expand the assets subject to pledge. This system is managed by the Civil Registry and Identity Service

and operates at a national level.

In addition, under this Act a new corporate structure for venture capital was created. This new type of company has the flexibility of a limited liability company and the capital structure of a corporation, in order to allow multiple and cost-reduced agreements between the Funds Manager and the owners of the company in which the investment is made, so that the Funds Manager's risks are reduced and the benefits are increased.

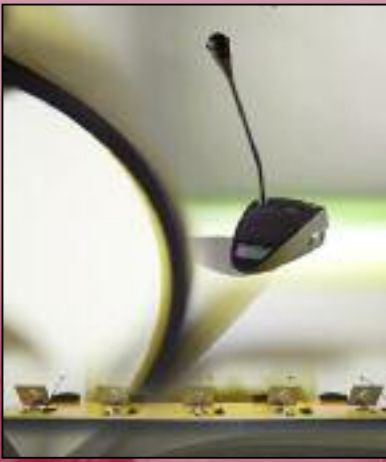
Source: Notarios y Conservadores de Chile

LEGAL PROFESSION UNIVERSAL LIBRARY



On November 25, 2005, the Union Internationale des Avocats (UIA), the Turin University, the Turin Bar Association and the Foundation Croce signed a convention for the creation of the Legal Profession Universal Library. The project aims at providing a practical guide in order to know the rules of the profession, with the goal of the harmonization of their practice for the legal community

Source: Union Internationale des Avocats (UIA)



CONFERENCES AND SPEECHES

3

CHAPTER



Hans von Loon

SPEECH

3.1 FORUM OF THE INTERNATIONAL UNION OF NOTARIES,

SAO PAULO, MAY 20, 2007 *"THE COMMITMENT OF THE UINL WITH THE DEFENSE OF THE CITIZENS AND THE STATE OF LAW: PRESENT TIME AND PROSPECTS". THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW AND THE LATIN BODY OF NOTARIES: A COMMON MISSION AT THE TIME OF UNIVERSALISATION AND REGIONAL INTEGRATION.*

Speech by Hans van Loon, General Secretary of the Hague Conference on Private International Law.

I am honored to be invited by your President to contribute to the reflections of this Forum of the UINL (International Union of the Latin Body of Notaries) on the subject of "The Commitment of the International Union of the Body of Notaries with the Defense of Citizens and the State of Law. Present Time and Prospects". What is immediately astonishing as to this subject is its boldness because once the Union has announced its commitment in favor of two such fundamental values as the defense of citizens and the State of Law there is no possible coming back. As a matter of fact, it would not be possible, after this conference, to come back home and say "ah, you know, after thinking it over, we have deemed it wiser for the Union not to commit to defend the citizens and the State of Law". You are already assuming your responsibility with respect to such fundamental values. This Forum invites in fact to reflect on the scope and modalities of this responsibility particularly in a world in full movement where precisely both the citizen and the State of Law must face new challenges.

I. UNIVERSALISATION AND REGIONAL INTEGRATION - AN INVITATION TO THE NOTARY

In this sense, I propose to reflect for a moment on the impact, over the development of our societies and our legal systems and, consequently, over the future role of the notary, of two circumstances otherwise connected: universalisation and the regional integration.

Universalisation -in the descriptive sense of the term- means the undeniable historical process by which men, women and families, human activities and the political structures increase their mutual dependence, their material exchanges and their information over significant distances at the planetary scale. Accelerated by the technical

progress, this process is driven not by political powers (particularly in the name of the State) but by the force of the initiative of private persons -including international migration and tourism-, NGOs and the companies increasingly competing on a worldwide scale. This gives rise to a certain deficit of public policy and regulation that, precisely, explains the criticism against universalisation, against "globalization".

The different manners of regional integrations -the European Community in Europe, the Mercosur in this continent, the CEDEAO and OHADA in West Africa, the ANASE in South Asia -are in part signs of the universalisation that naturally affects the neighbor countries in the first place. At the same time, they represent the efforts from groups of States tending to resume the initiative and reintroduce order in the economic, political and cultural areas in the regional level. But, since many of these developments exceed even the regional borders, such efforts are not often enough. In this connection, it is important that the integration regional organizations have begun to adhere themselves to worldwide organizations. It is the case of the European Community that is a member of several specialized bodies of the United Nations such as the FAO in Rome and the WTO in Geneva, and that quite recently, on April 3, 2007, has also become a Member of the Hague Conference on Private International Law, not instead of, but in addition to its member States, which are already Members of the Conference and remain to be.

It should be noted that when the human activity extends beyond the borders of the classic State of Law, in an environment increasingly universalized, the traditional regulation tools of the society lose their effectiveness and the basic concepts must be reconsidered. From the point of view of the private and commercial law, i.e. the statutes and the relationships of individuals, families but also the transactions of small and medium business, there is a particular aspect to ponder. When crossing several borders, our citizens are not confronted with only one official hierarchy and one law system, but a plurality of States, a plurality of officers -agencies, civil registries, judges, lawyers, notaries- and a plurality of private and commercial law systems. And this experience, often unexpected, renders them bewildered. They are at a loss. They do not understand that the familiar references (and also...) of their own State and law system are not enough. They get angry at the injustice they perceive. The funny thing is that this bewilderment comes, at the first time, not from a lack of State or of law: it is the case of too many States and a lack of coordination and cooperation between the States and the law systems. This complexity, at the private law and the commercial law levels, is ignored by the policy makers and its impact largely underestimated, but it constitutes, according to our experience at the Hague Conference, a deep source of dissatisfaction and frustration for our citizens.

There are several actions to remedy this deficit. First, a better cooperation between States in the legislative, administrative and judicial area, both at the worldwide and at the regional level, and this, as far as possible, according to the nature of the problems and the means available for each of these levels. But this cooperation at the level of the States may not, in itself, fill the gap. It must be supported by various other actors: the international organizations including, in the field of the creation of the private and commercial law, such organizations as CNUDCI, UNIDROIT and the Hague Conference on Private International Law. It is also very important that such cooperation is supported by NGOs, particularly NGOs constituted by professionals such as the International Bar Association, the Union Internationale des Avocats and the Union Internationale du Notariat, your Union. We also see that these organizations are exploring and assuming new responsibilities with a prospect of a constant crossing of borders. Your works of cooperation with the World Bank within the framework of the legal entitlement of the property of the favelas here in Brazil constitutes a clear example thereof.

But we can go even further: while remaining a public officer in the State where he works, is not the Latin notary called to become also a transnational actor charged with defending those "citizens that are becoming the citizens of the world" confronted with a plurality of official hierarchies and different civil and

¹ In the Federal States we found several under hierarchies, which are, however, gathered under a Federal State and several law systems, which are, however, more or less familiar.

commercial law systems? To whom shall a couple having the intention to settle in a far away State resort to arrange its marriage regime so that such regime is not only respected in that new State but also in all the States where the couple shall have to deal with in the future? By advising and assisting such couple in movement, the notary exercises his duties in an impartial and independent manner not only with respect to the hierarchy of his State but also beyond the jurisdiction of his State, placing himself in a transnational level where it is necessary to ensure the legal security with respect to different States and law systems. We shall see it: it is even quite possible that the notary is called to advise his clients to choose between several law systems, to protect their interests in the event of a change in their powers, to govern their marriage regimes, to arrange their successions.

Within the perspective of the universalisation and the regional integration, the mission itself of the Latin notary is changing: a national and transnational actor, he devotes to assist his clients, citizens of his country and of the world, to find their way not only inside his/her State but also through an entire regional and even worldwide network of official and legal systems. Defend the right of the citizens and of the State of Law thus requires a new approach. While such future may seem still remote for many Latin notaries, you would not be gathered here if a great number of you were not confronted with this challenge.

The transnational notary requires a professional transnational framework. Fortunately, he already has one: the Union du Notariat and, at the regional level, particularly the Conseil des Notariats of the European Union. It is evident that the future responsible notary shall submit to the Union and to the regional agencies in order to be a reliable transnational actor. Having access to a transnational professional, deontological and scientific frame of reference shall be for the notary an increasingly elemental need.

The transnational notary also requires transnational legal tools: he already has them, but not in all countries, and often insufficiently. I obviously think of the Hague Conventions and the international private law instruments of the regional organizations such as the American States Organization and the Mercosur. And it is here that the Latin notary, the Union and the Hague Conference thoroughly meet. Because the international private law Conventions constitute the best means to guide our citizens and provide them with the legal security they need when they cross the borders or perform a cross-border activity.

It is because we are aware of this transnational legal reality and the new needs derived thereof that your President and myself have deemed it useful to take the common initiative of launching a campaign to draw the attention of the Foreign Affairs and Justice Ministers of the 80 States where the body of notaries represented in the Union are established on the Hague Convention. By a letter dated March 2, 2007, we have explained to them the following:

"[...] our co-citizens need worldwide instruments adequate to provide legal assistance, predictability and validity within the framework of their activities, whether for the preparation of a marriage certificate or a notarial deed abroad, the recognition of the formal validity of a will drafted in another country, the recognition of the legal status of a married or divorced person, the protection of incapable people, the administration of a foreign marriage regime or the succession of a person deceased in another country [...] [The Hague Conventions] are the result of thorough preparations and negotiations among a large number of States, and have benefited from the assistance of international professionals and organizations representing the persons for whom such instruments are designed."

By recalling the role of international professionals and organizations, we have evidently wanted to emphasize the importance of the Union contribution, during many years, to the negotiations of the Hague Conventions.

Thereafter, addressing directly to the Ministers and other people responsible, we have stated that:

"[...] by adhering to the Hague Conventions referred to in the annex attached hereto, your Country would render an invaluable service to its people who may resort to justice, and would also serve to the cohesion of its social and economic structure. The benefits of an adhesion to such instruments would be immediate, and would introduce your Country to a network of international legal, administrative and judicial instruments served by a highly qualified international secretariat, the Permanent Bureau of the [Hague Conference], operating on a scientific basis. Also, your country might benefit in many cases from the services of independent legal professionals, the notaries of Latin law".

As a matter of fact, we have just received the first positive reactions to our letter.

II. THE CHALLENGES - THE ROLE OF THE HAGUE CONVENTIONS

We have highlighted, in our letter, four challenges that an increasing number of our citizens must face in the universalisation era and to which they are going to increasingly resort, i.e. the notary as transnational actor:

- I. Reduce the administrative burdens related to cross-border public instruments
- II. Guarantee the legal status of citizens abroad
- III. Protect vulnerable people beyond the borders
- IV. Deal with the cross-border questions related to marriage regimes and successions.

Let's see on a closer basis the challenges involved and the extent to which the Hague Conventions are required to contribute a solution.

FIRST CHALLENGE: Reduce the Administrative Burdens Related to Cross-border Public Instruments

Here, we may note before anything the Hague Convention dated October 5, 1961 that abolished the requirement to legalize foreign public instruments, or "Apostille Convention", which considerably facilitates the cross-border circulation of public instruments replacing the constraining and often costly formalities of the classic legalization process by the mere delivery of a certificate, an Apostille.

What is revolutionary in this Convention is that it permits to avoid the traditional method of indirect authentication of public instruments -the diplomatic and consular method- and that it institutes the possibility of authenticating such instruments directly between the interested parties beyond the borders. The Convention has been largely ratified and counts, as of this date, 91 contracting States. The notary, a transnational actor, is a major professional user thereof.

But this Convention dates back to 1961. We are living in an increasingly electronic environment. That is why the Conference and the National Notary Association of the United States of America have had the initiative of launching an innovative program: the electronic Apostille (e-APP). We have begun developing safe, inexpensive and operational softwares permitting:

- the issue and use of electronic Apostilles (e-Apostilles), and
- the creation and implementation of electronic Registries of Apostilles (e-Registries).

The program is designed to extend the scope of the Convention to electronic supports and reinforce its advantages making its operation safer and more effective.

The program has been tested in February this year, when the State of Kansas (United States) delivered the first e-Apostille and Colombia, the recipient State, officially accepted this e-Apostille. The two jurisdictions are then now ready to authenticate public instruments on an entirely electronic basis. Additionally, the State of Rhode Island (United States) has joined the e-APP program by adopting and implementing the free e-Registry. Any interested person may now on line and on a safe manner seek an Apostille delivered by officers of Rhode Island recording its number and date. The registry shall automatically indicate the existence of a corresponding entry, thus permitting the recipients to check the origin of the Apostille on a faster and more efficient manner than we can do today.

The program also appears as a useful tool against fraud because the e-APP gives a security level higher than the paper support. This element proves to be very important because an increasing number of confidential public instruments -such as birth certificates, notarial deeds, international adoption certificates, diplomas- are exchanged among the States.

SECOND CHALLENGE: Guarantee the Legal Status of Citizens Abroad

It is essential for citizens that their marital status or their status as a separated or divorced person is largely recognized abroad. Two of the Hague Conventions, one dealing with marriage and the other with divorce, contribute to the legal security in this connection. They have not been extensively ratified yet, even when their legal infrastructure should be imposed to all countries at the era of the increasing mobility of couples and families. These two tools should be available for the notary as a transnational actor.

A. The Marriage Convention

The Convention dated March 14, 1978 on the celebration and recognition of the validity of marriages is a multilateral instrument and essential vector of legal security both on the marriage conditions of foreign citizens and on the recognition of a marriage executed under the rules of a State where the celebration took place. By doing away with the doubts on these two areas, the Convention serves the interests of citizens, governments and administrations. The Convention reserves the right of a contracting State not to celebrate or recognize a particular marriage when the same shall prove to be manifestly contrary to the public order in a specific case. For the recognition of the marriage -and this is new particularly for the systems referred to as continental law- it waives a test of the applicable law: it is enough that the State where the marriage has been celebrated has a sufficient link with the couple. The Convention permits the States to refuse to recognize the validity of marriages when their minimum conditions related to age, bigamy, free consent and forbidden unions have not been respected.

B. The Divorce Convention

Further, the Hague Convention dated June 1st, 1970 on the recognition of divorces and legal separations, guarantees the recognition of divorces and legal separations validly obtained in other contracting States. It only deals with the legal status of spouses and former spouses, and never refers to any disputes relating to non-compliance, questions related to children or financial questions. The obligations regarding alimony are further subject to a new Hague Convention on the international cover of alimonies regarding children and other members of the family, currently being negotiated, that we expect to achieve in November 2007. The divorce Convention has also certain importance from the point of view of the cultural and religious diversity of our planet: it provides a framework for the recognition of unilateral separations and divorces, always provided that they are pronounced in accordance with the legal procedures and other procedures officially recognized in the State where they have been obtained and always provided that they produce legal effects. This allows, under certain conditions, to recognize the repudiations pronounced in the Muslim law countries. The Convention also offers barriers against the migratory divorce and the search of the most advantageous jurisdiction (forum shopping).

THIRD CHALLENGE: Protect Vulnerable People Beyond Borders The issues concerning vulnerable minors and people of age are increasingly frequent in the notarial practice: purchase of a property in the name of a minor domiciled in another country, acceptance of a donation by a foreign minor, constitution of a civil society between parents and children residing at different countries. Also, the problems related to the aging of the population add to the problems resulting from mental illnesses and the increase of drug addiction. Universalisation requires here the tools not only to coordinate the different law systems but also to regulate the behavior with respect to vulnerable children and adults in order to avoid eventual abuses.

A. International Protection of Children in General

The Hague Convention dated October 19, 1996 concerning competition, governing law, recognition, enforcement and cooperation regarding parental responsibility and the measures to protect children offers a complete legal framework to protect children under cross-border conditions. It covers civil measures to protect a child, and the issues related to his/her representation and the protection of properties. The Convention permits to avoid the risk of contradictory decisions assigning the primary responsibility to the authorities of the country where the child usually resides. It also permits any country where the child

is staying to take the necessary urgent or temporary measures of protection. It determines the country whose laws shall govern and anticipates the recognition and the execution of the measures taken in a contracting State in all the other contracting States. Further, the Convention offers a structure of exchange of information and cooperation among the administrative authorities of the different contracting States. The Convention completes and reinforces the Hague Convention of October 25, 1980 on the civil aspects of international child abduction, thereafter well known and largely ratified. All the countries of the European Union shall soon be Parties to the 1996 Convention. Australia, Morocco and Ecuador appear among the number of member States and the Convention is being reviewed by many other States from Latin America and also Canada and the United States.

B. Protection of Children Adopted Abroad

In the specific field of the protection of children adopted abroad, the Hague Convention dated May 29, 1993 on the Protection of children and the cooperation related to international (intercountry) adoption has already been ratified, particularly in Latin America. For the notaries, it may imply a redefinition of their duties. At present the problem is acutely being suffered in Guatemala. Guatemala is undergoing a very difficult situation as a result of a decision from its constitutional Court taken in 2003 that declared as unconstitutional the adhesion by such country to the Hague Convention, particularly at the request of the Guatemalan notaries. It is expected that the parliament shall soon confirm the statute of the Convention within the internal order of the country. Guatemala's notaries must accept that if they have a role to play with respect to certain acts, they shall not certainly participate in the adoption process.

C. International Protection of Vulnerable Adults

The purpose of the Hague Convention dated January 13, 2000 on the international protection of adults, is to carry out, for incapable adults, what the above 1996 Convention accomplishes for children. The increase in life expectations is accompanied by an increase in old age-related pathologies. Many pensioners decide to spend the end of their life abroad. Notaries are very often confronted to international private law issues related to the management or sale of property belonging to people suffering an alteration or a decrease in their personal mental powers. When such adults have previously organized their protection in case they become unable to see to their own interests, the issue regarding the respect of such provisions abroad arises. The key provision of the Convention related to the aforementioned is reproduced below, and it thus permits to immediately identify the new prospects that may be available for the adults and their legal counsels, including the notary:

"Article 15

1. The existence, the extent, the modification and the termination of the representation powers conferred by an adult, either by an agreement or by a unilateral act, in order to be exercised when such adult shall not be in condition to look after his/her interests, are governed by the laws of the State of the usual residence of the adult at the time of the agreement or the unilateral act, unless any of the laws mentioned in paragraph 2 has been expressly designated in writing.
2. The States, the laws of which may be designated are the following:
 - a) a State where the adult has got his/her nationality;
 - b) the State of a former usual residence of the adult;
 - c) An State where the properties of such adult are located, concerning such properties.[...]"

It shall be the duty of the notary to guide such adult (and his/her family) when he prepares for the event of his/her disability to look after his/her interests. Such preparation may then include the possibility for the adult to submit to the rules of a legal system other than that of the State where the notary carries out his practice concerning his representation. And here is when the notary appears as a transnational actor. Such innovative Convention has been ratified by Germany and signed by Switzerland. It shall become effective this year.

² Such confirmation has actually taken place the day after the Sao Paulo Forum, namely on May 22, 2007

FOURTH CHALLENGE:**Deal with Cross-border Questions Related to Marriage Regimes and Successions**

It is here that we find ourselves at the heart of the notarial mission in the era of universalisation. This requires the notary to advise the couples and the individuals related to several law systems and who shall be soon in condition, going beyond the limits of only one juridical order, to choose a law with which they have a link and place themselves under its rule.

A. International Relations Regarding the Property of the Spouses

The increasing shift of individuals and families from one State to the other, the fact that a large part of the population acquires property abroad as well as the growth in the number of divorces extensively contribute to the increase of the usually very complex matters related to the property of the spouse. The Hague Convention dated March 14, 1978 on the law governing marriage regimes guarantees that the provisions related to the marriage regime adopted in a contracting State shall be respected in all the other contracting States. The Convention gives the spouses the possibility, and this is revolutionary for many law systems, to designate, within certain limits, the law that shall govern their marriage regime, and adapt their choice to the evolution of their needs. Again, notaries play an essential role of assistance to the spouses within an international context to protect their property interests and those of the members of their family when they settle abroad.

B. International Successions

Many Hague Conventions are available to understand the complex issues posed by the cross-border heritage affairs. They prevent wills from remaining unenforceable abroad due to the ignorance of the formal requirements and procure the legal security in cross-border succession matters, among others when the succession implies an Anglo-Saxon trust.

1. Guarantee the Formal Validity of Wills Abroad

The formal conditions of wills and other testamentary provisions vary from one country to the other. The Hague Convention dated October 5, 1961 on conflicts of law related to formal matters of the testamentary provisions, protects the will prepared according to the formal conditions specified by the laws of a State with which the testator has a reasonable link, against the risk of seeing a will declared null in a contracting State merely due to its formal aspects. The Convention has permitted to considerably reduce the disputes related to the formal validity of foreign wills. It shall be available as an elemental tool for each notary acting as a transnational actor.

2. Facilitate the Organization of International Property and Guarantee the Security of Succession Issues Implying an International Aspect.

The Hague Convention of August 1st, 1989 on the laws applicable to successions as a result of death, although not in force yet, has influenced the internal legislation of many countries and currently serves as substantial reference for the works carried out by the European Community to deal with cross-border aspects of successions. As with the Convention on marriage regimes, it permits the testator to designate the laws governing the succession (*professio iuris*). Such freedom is not absolute, but limited, in order to protect the interests of closer relatives and the spouse or the surviving partner. This does not prevent notaries- as with the Conventions for the protection of adults and the marriage regimes, prospects without precedent for the notary's duties- to be required to advise his clients in a transnational environment where it is not the State that establishes the law but where the citizen himself determines, with the help of his privileged advise, the law that must be applied to his/her situation. The Convention also specifies uniform rules applicable when the testator has not made a (valid) designation and introduces the fundamental principle of the succession unity. In the absence of a valid choice of governing law, the same shall be, in principle, the law of the last usual residence of the deceased, with certain exceptions to the benefit of the national law of the deceased. The Convention also expressly deals with the succession covenants,

which are authorized in certain systems, under different shapes, but forbidden in others, again with a possibility to designate the applicable law within certain limits.

3. Bring Together the Systems that Recognize the Notion of Trust and Those that do not have this Tool within their Legal Devices

Within the framework of successions implying a cross-border aspect (as otherwise in other fields of law), particular difficulties may occur when legal systems which comprise trusts (mainly the common law system) are confronted with other jurisdictions that do not benefit from this tool (mainly the Roman-German law systems). The Hague Convention of July 1st, 1985, on the law applicable to trusts and their recognition, contains, in addition to the rules related to the applicable law, the characteristics of trusts which provide relevant information to Roman-German jurists, and further specifies the effects that must be recognized in order not to distort the legal concept of trusts. Concurrently, the Convention makes sure that Roman-German law States are permitted to make such recognition, while protecting the integrity of their legal system, even when conferring effects to the trust, and always provided that such effects are consistent with the laws related to the protection of children and other vulnerable persons, or with a whole range of other interests. The Convention has just been ratified by Switzerland. It is being studied in many other countries.



The notary is a key element of stability of our societies. He undoubtedly has the duty to defend the rights of citizens and of the State of Law. At the era of the universalisation, it is necessary for the notary to be aware of the increasing importance of the transnational character of his professional activity. It may be useful for the notary to redefine himself as a transnational actor -while remaining rooted to his own law system. The Union of the Body of Notaries (Union du Notariat) has a first rate role consisting of supporting the notaries in their preparation to face these new challenges. For many aspects of the international life, the Hague Conventions provide essential tools. Together, the notary, the Union of the Body of Notaries and the Hague Conference, without forgetting many other professionals, NGO and international agencies, have the mission to create the worldwide legal space to which our citizens and ourselves aspire.



LEGAL-NOTARIAL ISSUES

4

CHAPTER



Not. Arnaldo A. Dárdano

4.1 FREEDOM OF CHOICE IN NON-CONTENTIOUS SUCCESSIONS

By: Notary Arnaldo A. DÁRDANO (*)

Society as a whole demands alternatives from the Law that, without diminishing legal certainty -an inalienable value of the State-, allow it to attain better goals and satisfy its needs, whether by eliminating red tape, reducing formalities and, finally, improving life quality.

Consequently, in case of an illegal situation, the citizens must be able to resort to the courts for the same to restore, to its appropriate extent, the "right" that is deemed to have been violated. The institution created to such end is the Judicial Branch (one of the three branches of the State), an essential pillar for a peaceful coexistence and an inalienable need of humanity. In that context, a Lawyer, either acting as a "Judge" or "Magistrate", "administers justice" in a fair manner, restoring violated values based upon legal rules and the "judicial authority" or power given by the State. Without justice, "Man cannot be considered as such..." and we would have to resort to the physical power or shrewdness to survive, as an irrational animal.

To that end, it is imperative for ordinary citizens to hire a Lawyer -who would act as their "Legal Counsel"- to inform them of their rights and advise such citizens on their legal possibilities and how to claim. This professional in Law, who has the same education as the above -but in a different function- gives personal advice when a person faces a lawsuit, either as plaintiff or defendant- or when he/she considers to be affected by the exercise of the power

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of State, an unconstitutional Act or an endless number of situations in which justice should be administered. This Lawyer knows what and how to claim and/or prove to avoid such person's rights being declared null and void or violated.

On the other hand, if a citizen wishes to acquire real property, organize a company or, in short, enter into an agreement with other citizens sharing the same intents, such citizen will require the services of another professional in Law, who nowadays is also required to be a Lawyer in our country, holds the same academic degree and has the same knowledge as the two above professionals, but exercises a notarial task. This Notary, in which such person trusts, interprets the parties' intentions, advises on the applicable legal and tax aspects trying, in short, to avoid litigation, confers legal effectiveness to the formalization of rights, gives validity to evidence -in the hopeless case that the citizen is forced to claim at court-, and legal certainty to contracts, attesting such notary's acts while rendering a public service delegated by the State.

In other words, it is the same student of law who obtained the same degree from a Public or Private University but performs a different activity. He is not a State official (though continuously collaborates as a reporting, withholding and paying agent), given that he or she receives no compensation from the State, has no administrative hierarchy, but has the delegated power to attest that, in principle (unless objected to as false), has the necessary force to be considered true, without discussion.

Now then, in case of a family death, if the heirs are all of age and legally capable and there are no issues or controversies among them, such heirs could submit the corresponding documentation at a notary's office and request a notary freely selected by them to determine, by means of a Notarial Record (upon compliance with the relevant legal requirements), that they are the "Heirs" of the decedent.

There are no rules in our substantive legislation (National Constitution, Civil Code or supplementary rules) preventing such persons from acting as above stated. On the contrary, the Legislatures of each Province and of the City of Buenos Aires have the authority to legislate on such proceedings.

Due to the foregoing, in cases where no dispute, lawsuit or controversy exists, it is authorized by Law not to submit the case to the Judicial Power (thus reducing the number of unnecessary cases since no decision by a Judge is required but the declaration of certainty by a Notary). Consequently, no assistants of Justice are required, such as a legal counsel, as (exclusively in the above described cases) no rights are questioned and the only claim is the objective verification of the documentation certified by the notary public.

This is because we are not facing a fictitious situation resulting from an extravagant legal concept, but the performance of a task included in the notarial activity and already contemplated by several legislations of South America and Europe, where it is successfully applied. It would be a real shame for society not to take this opportunity of freedom of choice (and not obligation), considering the legal certainty widely attributed to the notarial organization and the "conservation of the act" (matricidad), which means that a Public Deed has been entered in the Book of Records -stored in a fireproof manner-, thus preventing any loss or destruction of documents and files, to which no similar treatment may be given and, consequently, no similar results may be obtained.

The Notarial Organization, by means of the respective Association of Notaries of each jurisdiction and the Federal Notary Council representing them, is formed by fully qualified members performing a task that, in an optional manner, is able to offer a professional service to reduce the load in the court system, prevent delays and give legal certainty in cases where the "judicial authority" of a judge is not required and no decisions unrelated to the tasks involved are necessary. The Notary is a professional in law who renders a "public service" entrusted by the State, with the power to attest. In such capacity, everything related to the reception of documents, control of legitimacy and capacity, formalities, proceedings, additions to the Book

of Records, issuance of Certified Copies and Authorization of Notarial Acts, is an ordinary task of such notary's profession. This is an area in which the notary is well experienced and meticulously discharges his duties with impartiality and unquestionably efficient results.

Also important is the "conservation of the act", that is, the keeping of the original in a Book of Records, and the support of an entire organization with Notarial Files preserved with care. In addition, legal certainty is also extremely important when the decedent's estate consists of real property and a title search is required. In this manner, it is possible to avoid losses, the substitution of lost court files or the performance of the unnecessary task of requesting dockets of stayed proceedings or that have not yet been filed and having to return them -which many times implies notifying the parties involved and/or justifying a legitimate interest-, only to review them and verify the likelihood of the Certified Copies. This task is not performed out of distrust in all colleagues and/or acting officers, but to verify that such Certified Copies are legitimate and relate to the corresponding File. Though painful, we must admit that some files are lost or not returned after removing the Certified Copy or filing a Determination of Heirs through a "shortened registration process" system. Also, there are false Certified Copies bearing legalizations that do not correspond to any existing File. It is true that all of the above may happen in a notarial organization but, according to reality, files DO NOT get lost and it is much more complicated for forgers to avoid notarial controls, let alone that the documents authenticity may be immediately verified.

As regards the determination of heirs by a notary, this is actually done at the request of one or more interested parties, who must have the legal capacity to do it, by submitting the relevant documentation for control purposes. Upon this, legal notices are published and, if no controversies exist and there are no incapable persons or minors involved, this is considered an "Objective Act" that may be conducted by any public official (notary), duly qualified to do it, who has no judicial authority (not needed in this case) but legal authority.

Please note the following:

- 1) A notary does not replace a judge; on the contrary, the judge's involvement is reserved for those cases where it is essential to have a judicial authority,
- 2) A notary does not replace a Lawyer, given that no litigation exists, who continues to be involved in the same manner in the issuance of all deeds.

Of course, since this is an alternative and voluntary proceeding -though, in my opinion, unnecessary-, no impediment exists for the parties to be represented by a Legal Counsel, whose participation as an assistant of Justice would be really important for consulting and control purposes.

The voluntary nature of this proceeding is essential, given that no obligation exists in this aspect and it is up to the heirs to elect one proceeding (either judicial or notarial) based on their urgency, interest or convenience. When we say "convenience", we mean that, in our experience, sometimes it is necessary to simultaneously carry out the Assignment of Inheritance Rights, with or without reserve of usufruct, agreements for undivided share of real property included in the estate, (total or partial) Distribution and Award of the decedent's estate, Homestead registrations, registrations by means of a "shortened registration process" system, and other situations in which we have experience. No imposition is intended; we are simply offering a legal alternative to society that may or may not be accepted, depending on each case.

We may conclude that a Notary is an appropriate official who will act impartially and independently, give legal certainty and authority to the necessary instruments, and solve, in a rapid, voluntary, simple and natural manner, all acts wrongly identified as "non-contentious jurisdiction", given that such term is contradictory and no "jurisdiction" exists since there are no parties but requiring parties.

Every action implying a citizen's freedom and option improves his or her life quality and dignity, without affecting legal certainty, as demonstrated above.

Consequently, it is not a "privatization" of Justice but an undisputable reality. Judges must act in case of disputes or to protect minors or incapable people; lawyers, when representing such people or if the parties freely decide and elect to receive their advice; and notaries, in all proceedings involving control and custody of documents and the attesting function inherent to their profession.

4.2 CHALLENGES TO AUTHENTICITY OF THE ELECTRONIC NOTARIAL ACT

SUMMARY OF A PRESENTATION AT THE 3RD INTERNATIONAL FORUM ON DIGITAL EVIDENCE, LOS ANGELES, CALIFORNIA BY MAÎTRE. JEFFREY A TALPIS, NOTARY, LAW PROFESSOR

Over 121 government representatives (including several from Competent Authorities designated under the Hague Apostille Convention¹), civil and common law notaries, experts and other dignitaries, from 25 States, convened in Los Angeles, California (USA) to attend the Third International Forum on Digital Evidence, organized by the National Notary Association (NNA) of the USA held between May 30 th and June 2nd, 2007.

Presentations included updates on:

- The e-APP and its two components - the e-Apostille and the e-Register - as promulgated in the models developed jointly by the Hague Conference on Private International Law (HCCH) and the NNA²;
- The recent exchange of the first test e-Apostille between the state of Kansas and Colombia;
- Current initiatives in Europe, North and Latin America regarding the application and recognition of electronically signed public documents; and
- The legal and technical issues surrounding the security and authentication of electronic documents and electronic signatures.³

As representative of the International Union of Notaries I presented a paper which was part of a panel discussing the Legal requirements for establishing and proving original documents for evidentiary and public recording purposes.

In my presentation I dealt with the challenges to authenticity in the establishment and use of an Electronic Notarial Act (ENA) in civil law jurisdictions.

In order to address these challenges, it was important for me firstly inform the participants ,many of whom were delegates from the United States , of the essential features of authentic instruments, in particular that they are acts drawn up by a competent public officer authorized by law to give to them the status of 'authenticity. Where a party is required to sign the act, the simultaneous presence with the public officer is required at the time he receives his or her signature. The authentic instrument benefits from the credibility and value of acts of the State and has a very strong probative value.

This led me to discuss the Notarial Act which is the most important authentic instrument in civil law jurisdictions as well as the role of the civil law notary in the drawing up, reception and conservation of the act. Although the possibility of using an ENA as an alternative to a Paper Notarial Act (PNA) has been

¹ *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents - for more details on this Convention, see the "Apostille Section" on the Hague Conference's Web site at <http://www.hcch.net>.*

² For more information regarding the e-APP, see the e-APP Web site at <http://www.e-APP.info>.

³ The presentations made during the Forum are available on the Web site of the HCCH (<http://www.hcch.net>) and the NNA (<http://www.nationalnotary.org>). The presentations that specifically related to the e-APP are also available on <http://www.e-APP.info>.

discussed for some time by notaries, notarial organizations and the International Union of Notaries, its use has been only authorized in a few jurisdictions (Spain, Austria, France⁴, Italy and Quebec⁵) and is not yet operational in any of them⁶.

To avoid any confusion it is important to clarify that the ENA is an act where the original is drawn up on an electronic support, and received by the notary, having the same requirements as a PNA. Thus a PNA signed by the parties and the notary, scanned and migrated to an electronic support is not an ENA, nor is an electronic version of a PNA, which has been previously signed on a PNA (without scanning). The few laws that do specifically provide for the use of the ENA are drafted in a technically neutral manner so as to ensure that they do not favour the PNA over the ENA⁷. The few laws examined retain a single definition of a notarial act. They simply provide an alternative medium to be used. They are of course completed by provisions in the civil Codes or specific laws such as 'An Act to Establish a Legal Framework for Information Technology adopted in Quebec in 2001⁸.

There are in my view at least four challenges to ensure that an ENA retains the authenticity of a PNA:

- 1. The reception of the Act**
- 2. The Conservation of the Act**
- 3. The Electronic Signature**
- 4. The requirement of integrity**

1. The reception of the Act

The reception by the notary of the act requires the simultaneous presence of the parties and the notary at all phases. Even though the identity of a party who is not present before the Notary could be established with almost absolute certainty his or her physical presence of the party is indispensable to permit the notary to judge the reality, the quality and the seriousness of the consent given. There are attitudes, behaviour, even the silence or expressions which are indicative. Such verification is inherent to the reception of the act and the resulting authenticity given to it by the notary.

As such if there were legislation allowing an electronic signature outside the presence of Notary one can hardly say that the act has been received by the notary. The ENA is simply not authentic at least not in the generally recognized meaning of an authentic instrument.

Yet paragraph 3 of article 50 of the Quebec Notarial Act does allow for the signature of a party outside the presence of a notary although the conditions of its use has to be approved by the Bureau, which I would hope it never becomes a reality⁹. In fact even if the definition of authenticity were to be modified to reflect this possibility in Quebec, its recognition globally would be questionable.

The better solution which is that proposed for France and adopted in Quebec for the ENA¹⁰, is the rule which has always existed for Quebec PNA's permitting a party to sign a PNA in the presence of a notary other than the officiating notary. In fact in Quebec this even includes a notary of a foreign country if its' organization is a member of the UINL¹¹.

At the end of the day, does not the physical presence of a party in the presence of the officiating or non-officiating notary render the use of an ENA marginal or at best, rare?

If a party needs to be physically present before the notary, why not use the PNA, have a copy thereof migrated to another medium, which is what is being done currently in Quebec and in other civil law jurisdictions, in particular for publication or registration of the act.

⁴ Arts 1317,1317.1,1317.2,1317.3,1317.4 Civil Code ⁵ Notaries Act,R.S.Q.c.N-3,arts 35.,39 ,50

⁶ For example the use of an ENA which is authorized under article 35 of the Notarial Act will become a reality when approved by regulation of the Bureau ⁷ Both art 35 of the Notarial Act (Quebec, op cit. supra, note 5 and 1317 CC (French Civil Code

⁸ R.S.Q.c.C-1.1 ⁹ I made this plea some time ago ;See the article published in Entr'acte(Quebec)

¹⁰ par 2 of article 50 of the Quebec Notarial Act, supra note 5.

¹¹ article 50 ,par 2 of the Quebec Notarial Act 5.

2. The Conservation of the Act

Civil law jurisdictions impose upon the notary the conservation of the original of the notarial act: This involves the keeping of a Repertoire, which is a day to day summary of the act, parties and the date. Conservation of the original is an essential feature of Notarial act; Aside from guaranteeing the integrity of the content of information, act it enables interested parties to consult the original and to obtain copies.

It is interesting and thought provoking to compare the system in force in the Province of British Columbia which under the Land Title Act ¹² allows lawyers and notaries to submit land title documents for registration by electronic means. Because the law requires an original to be filed, an electronic instrument that has been received by the registrar is conclusively deemed to be the original of the instrument while the paper version of it is deemed to be a copy thereof ¹³.

Adapting this obligation to conserve for ENA's is as can be expected a major challenge.

What needs to be achieved is, at the very least, a stable environment to ensure the same goals sought in the conservation of the PNA would apply to the ENA. This is probably the most difficult challenge. At present only the Austrian notaries have a system in place, one which privileges a centralization of the ENA's and for a certain period of time the co-existence of the PNA and ENA.

A centralization of ENA's has also been proposed for France. Although no concrete proposals have been made for Quebec, discussions have centered around articles 12 and following of the *Act to Establish a Legal Framework for Information Technology*¹⁴

3. The Electronic Signature

The signatures of all the parties and the notary are required for all PNA's.

The major challenge for the use of the ENA is to establish conditions and modalities for the use of Electronic signatures (hereinafter called the ES).

There are a large number of laws which define the electronic signature.

The question of what may be used as an electronic signature is not a technical question but a legal one, since a technical process or data set will only function as a signature if they are recognised as such by the applicable law.

The term electronic signature (ES) is sometimes used to connote a signature in digital form which when used will satisfy the desired goals of authenticity, integrity and non-repudiation. Sometimes the choice of technology for creating an ES is left to the parties.

There are therefore many forms of ES and all can be capable of being electronic signatures, including biometric identifiers such as fingerprints, voice prints and digital signature created through the use of public key cryptography or other mechanical means such as a rubber stamp, a mark, a PIN number or a machine -created smart card.

There is presently no specific electronic signature for the ENA.

It would seem to me that unless there is some specific form of ES required for the ENA, the general rules on ES found in the civil codes or other laws apply. Clearly by not requiring a specific ES for the ENA it becomes more accessible to the public and by analogy with handwritten signatures, none are the same. Yet without insisting on a high - tech signature, perhaps a few options could be provided for in the Notarial Act. In any event there should be a specific ES for the officiating notary?

¹² B.C.Reg.471/2003 ¹³ *ibid* section 168.6 ¹⁴ *supra* .

4. The requirement of integrity

A final challenge to the authenticity of the notarial act is the integrity, which includes both the integrity of the content of information and that of the process of conservation.

It is undeniable that the risk of alteration and modification is greater with technology based documents than paper based documents.

The integrity of the document is ensured if it is possible to verify that the information it contains has not been altered and has been maintained in its entirety and that the medium used provides stability and the required perrenity of the information.

The challenge then looms large for the legislator to ensure the integrity of the ENA and crystallize the technology in the law

CONCLUDING REMARKS

Even if these challenges are met, there are still private international law problems that won't go away, including (i) Legalization of the ENA or -E-Apostille of the ENA ;(ii). The law applicable to the validity of the ENA.

For example, in cross border recognition of a ENA, conflicts of law will still arise as to whether any form of electronic signature will be recognized and if so in what form. ;(iii)The law applicable to the evidentiary effect of an ENA and (iv)The global enforcement of an ENA which is enforceable in its own right under the country of origin.

There is thus still a lot of work and reflection that lies ahead for the use of the ENA in civil law jurisdictions.



PUBLICATIONS, BOOKS AND MAGAZINES

5

CHAPTER

5.1 PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA: TEXTS GOVERNING THE NOTARIAT AND NOTARY PROFESSION,

Edited by the National Chamber of Notaries of Algeria,
Algeria, 2006 Publié par la CNN d'Alger Algérie, 2006

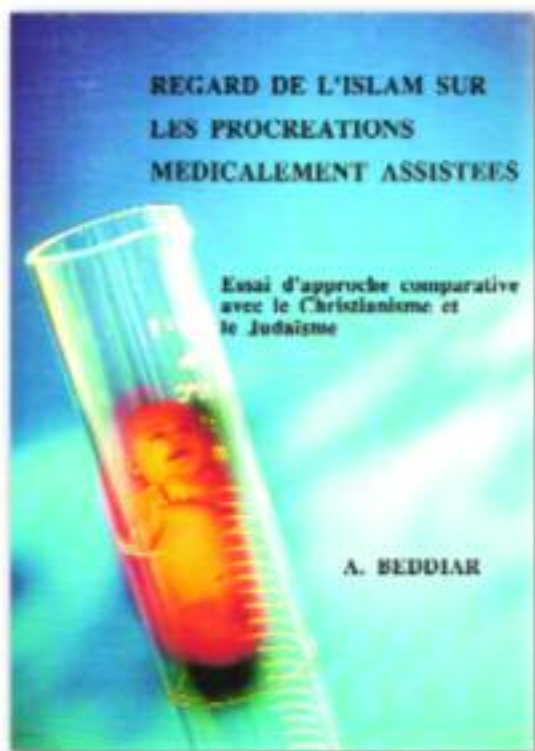


Edited by the National Chamber of Notaries of Algeria, this book contains the provisions of the new law governing the notariat and the notary profession in such country, recently incorporated to the UINL. Published in French, English and Arabic, this work first offers brief information on the People's Democratic Republic of Algeria, its elements and characteristics, such as official name, regime, area and population, official language, capital and main cities, religious observances, holidays and working days. Then, it describes the history of the profession, which is divided into three parts: the First Period, on the notariat historical origin in Algeria; the Second Period, including the colonial period, from 1830 through 1962; and the Third Period, on the notariat after the independence. Following this important introduction, for a better understanding of the notariat of such country, Act No. 06-02 is transcribed. This Act, enacted on February 20, 2006, provides the general rules of the notary profession and establishes the manner in which such profession is to be exercised and organized. Article 3 of such Act defines a notary as a public official, appointed by public authority, who is in charge of formalizing acts the authentication formalities of which are provided for therein, as well as the acts that the parties wish to perform in such manner. Title II refers to the conditions

to be admitted to the profession and the duties of a notary, as well as the related prohibitions and incompatibilities. The entire Chapter VI describes the form and contents of notarial contracts, including registers and accounting. Finally, Title III refers to the profession organization, inspection and control, responsibility and disciplinary sanctions, the Discipline Council and the National Resource Committee. To sum up, this is a very interesting short work on this notariat that is a new member of the UINL.

Comments: Notary Marcela Pesce

5.2 ISLAMIC APPROACH TO MEDICAL PROCEDURES FOR ASSISTED REPRODUCTION.



Comparative Essay between Christianity and Judaism. Abdelaziz BEDDIAR, A.E.I.F. EDITIONS

In this book, the author refers to the issues arising nowadays in connection with new assisted reproduction methods applied by medicine. He highlights the most important notions on this subject matter, both in connection with natural and positive laws and the concepts of Law and Ethics involved when facing new and complex problems related to filiation and succession. The author questions if what is considered technically, socially and legally possible may be admitted from a religious viewpoint, and compares the principles of the three most important monotheistic religions: Islam, Christianity and Judaism.

The book consists of an introduction, four chapters:

- I - History;
- II - Provisions of the Koran:
 - a) Creation of Man,
 - b) Evolution of a Human Being in the Mother's Womb,
 - c) Protection of Genetic "Fields",
 - d) Infertility;
- III - Artificial Human Reproduction Considering Legal, Religious, Ethical and Social Values;
- IV - Possible Solution to the Infertility Problem by the Islam, Christianity and Judaism; and a conclusion.

Comments: Notary Marcela Pesce