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Foreword

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FOREWORD

The *Penn State Journal of Law & International Affairs* (JLIA) created this issue as a collection of papers presented at 17th biennial meeting of the International Academy of Commercial and Consumer Law. While a foreword traditionally reflects the contents of a publication, here JLIA has elected to reflect on the passing of two of the issues contributors, Louis Del Duca and Norbert Reich. In memory of these two esteemed members of the legal community, JLIA dedicates this issue. Additionally below, JLIA has included two reflections on Louis Del Duca and Norbert Reich to commemorate their meaningful contributions to law.

IN MEMORY OF LOUIS DEL DUCA

By Mary Hiscock



In the 34 years of the history of the International Academy of Commercial and Consumer Law (the Academy), some colleagues stand out as exemplars and custodians of the principles and values that are the foundation of the Academy. These were summarised by Professor Don King when he wrote a Dedication at the beginning of the published Proceedings of the 4th Meeting of the Academy, which was held in Melbourne in 1989.

To the commercial and consumer lawyers of the new age, to whom national boundaries are but a useful basis for comparison, and international harmony of law is not just a dream, their knowledge is in the wisdom of the past, the development of the present, and the trends of the future; their satisfaction is in the mastery of complex subjects, the conveyance of knowledge to students, the fellowship of colleagues, the creativeness of scholarship, and the furtherance of just and needed reforms.¹

Don King, Louis Del Duca, and Norbert Reich immediately come to mind as such men. Tragically we have lost the continuing presence and contributions of all three.

Louis Del Duca was a scholar of distinction on the national and international scene. His learning constantly evolved and reacted to contemporary issues in commercial law. He was actively involved in the current work of the United Nations Commission on International Trade Law (UNCITRAL) on developing a framework for dispute resolution for online cross border contracts, particularly those where

¹ *Essays on Comparative Commercial and Consumer Law*, v, (ed) Donald King, Fred B. Rothman & Co, Littleton Colorado 80127 (1992).

there is high volume and low value of transactions. He was concerned with not only its implications for consumer transactions, but also for commercial transactions in domestic as well as international law. He was immersed in planning for the next Meeting of the Academy in 2016, to be held in Fukuoka, Japan. As usual, he was scheduled to contribute to this Meeting, as he had at every past Meeting.

Louis characteristically reached out and involved others in his work, regularly phoning and emailing and chivvying, where necessary. He was the most generous friends and colleague in the giving of advice and in his concern for the welfare of friends and colleagues.

Louis was a man of transatlantic culture as well as learning. He had a legendary love of opera and performance. In his youth he was torn between pursuing a life of music or of law. In the end, he had both.

Most of all, Louis was a family man. One of his gifts to the Academy was the opportunity to establish a friendship with Frances, his wife. When Frances was around, there was always an extra sparkle in Louis. This was most evident in the hospitality in 2000, when Louis hosted the 10th Meeting of the Academy at Dickinson Law at Carlisle.

Louis joined the Faculty of Law at Dickinson at the beginning of the academic year 1956-7, and “retired” 57 years later. He had completed military service in the US Navy. He had received the degrees of BA at Temple, LL.B at Harvard, and a Doctorate of Law at the University of Rome, La Sapienza. He had also briefly practised law, and taught political science in the intermezzo between Rome and Carlisle.

Throughout his long career, Louis taught generations of students Secured Transactions, Comparative Commercial Law, and European Union Law. He initiated the program for the Master of Comparative Law for overseas students and subsequently the Summer Session Abroad based in Europe. His editorial responsibilities included the Pennsylvania Bar Association Quarterly and the Uniform Commercial Code Law Journal. He was a member of the Committee of the US Secretary of State on International Trade Law, and was active in AALS.

Louis' most recent major work was "Secured Transactions under the UCC" with Edwin Smith, Marie Reilly and Peter Winship, and many many articles on online dispute resolution.

We will all miss him.

IN MEMORY OF NORBERT REICH

By Hans-W. Micklitz



Norbert Reich 1937-2015, Professor for German and European Civil Law, co-founder of the *Journal of Consumer Policy* 1976, Director of the Centre for European Legal Policy at the University of Bremen, 1982-1991, Director of the Riga Graduate Law School 2001-2004 and a faithful member of the International Association of Commercial and Consumer Law.

Norbert Reich's understanding of law as a discipline is deeply rooted in American legal sociology and critical German and American legal theory. That is where his interdisciplinary and cross-cultural international understanding came from. Consumer law and policy became a topical issue at the right moment in Norbert's academic life. Consumer law and policy cut across thinking in boxes, in particular disciplines of social science or in national legal orders. There were two stages in Norbert's academic involvement of consumer law and policy: first, an early commitment to German consumer law and, at a later second stage, an ever stronger focus on European consumer law and policy.

Norbert Reich began research on German consumer law as early as the mid-1970s. Together with Klaus Tonner and Hartmut Wegner, and on behalf of the then social-liberal government, he published the first draft of what would later be referred to as consumer law. Yet his emphasis was rather on the derivation and creation of a critical economic law, in which consumer law played an essential and permanent role. As early as in 1974, he advocated a structural reorganisation of civil law that was based on status. He writes: "I would like to distinguish between three fields following the reflections of the

socialist theory of civil law:² a) the legal communication of businesses (in the field of production capital), i.e., *company law* (companies in terms of antitrust law and not in terms of commercial law HWM), b) the exchange of goods between businesses and final consumers (in relation to the ownership of means of production to the ownership of consumer goods), i.e., *consumer law* (in the strict sense of the term – in the broader sense consumer law refers to administrative, penal and procedural rules; see Reich 1974), c) the field of private legal communication between citizens (classification and exchange of ownership of consumption means), i.e., *citizen law*.” As a logical conclusion of the case for an autonomous consumer law, he argued persuasively for a constitutionalisation of consumer law, a reversal of the relationship of dispositive and mandatory law and a reorientation of the legal dogmatic principles towards social science.

If one looks back to the initial situation of the 1970s, it comes as a surprise that the trisection of civil law has largely become a reality – within and through the Europeanisation of consumer law. The status-based revision of private and economic law has prevailed, strongly promoted by the European Union that had gradually become the driving force of consumer legislation. Norbert Reich had prepared the shift of national consumer law towards the European level through the then nine member states reports that the European Commission (through Ludwig Krämer) had commissioned.³ The country reports were published in the late 1970s with Norbert Reich as editor (Reich 1980/1981). From now on, Norbert Reich followed the creation and the development of a genuinely European consumer law in his role as managing director of the Centre for European Legal Politics (ZERP) at the University of Bremen.

His own research peaked in the monograph with the title “Civil rights in the European Union,” published in 1999. The subtitle clarifies the topic: “Subjective rights of Union citizens and third-country citizens with particular focus on the legal situation according to the

² Norbert Reich wrote his habilitation on Soviet Civil Law. He translated from Russian to German Pēteris Stučka the second important Marxist theorist Paschukanis. Pēteris Stučka, *DIE REVOLUTIONÄRE ROLLE VON RECHT UND STAAT* (Norbert Reich trans., 1969).

³ The nine country reports are available in English, the comparative analysis in English, French and German.

case law of the ECJ and the Treaty of Amsterdam.” In order to justify the necessity of the protection of subjective rights in a transnational quasi-state institution such as the European Union, Norbert Reich chose *Georg Jellinek’s System of Subjective Rights* (1892) as the starting point. There is a direct link between the ground breaking contribution on the reorientation of civil and economic law (1974), the publication on the promotion and protection of diffuse interests in the European legal order (1987), and his work on the civil rights in the European Union (1999). During a period of 25 years, Norbert Reich not only contributed to the Europeanization of civil and economic law, but also illustrated the necessity of their integration into a European constitution.

In 2001, Norbert Reich was appointed rector of the Riga Graduate Law School. He focused on the eastward expansion, especially on questions of a modernisation of consumer, civil, and economic law in the Baltic States as well as in the former central and eastern European block states, the integration of which into the EU had been agreed (and came into effect in 2004). After his retirement in 2005, he again dealt with European consumer law and union law in the shape of a conceptual and dogmatically thought-through overall presentation. It is due to his indefatigable energy and dedication that Intersentia published the second edition of the “European Consumer Law” under Reich’s overall responsibility (Reich et al. 2014). Shortly before his death, the new edition of his work “Understanding EU Internal Market Law” was published. This is not another introduction to EU law; rather, it focuses on the “internal market,” the civil and economic law of the EU that is surrounded by civil rights, and their leading principles. Although these two later works may be reason enough to trace his enormous creative power, his intellectual legacy lies in a dense monograph on the “General Principles of EU Civil Law” that was published in 2014. This book brings full circle his work on the reorientation of civil and economic law he first argued for 40 years ago. The careful choice of the title reflects the economic and socio-political significance of civil law. European Civil Law should be guided by general principles that are rooted in the constitutional order of European society.

The International Academy of Commercial and Consumer Law will remember him as a loyal participant to the biannual

conference, an inspiring mind who contributed heavily to our international community he hosted the 12th biannual meeting of the IACCL in Riga/Latvia 2004. We will miss his bright ideas and his endurance for the role and importance of consumer law in an international economy that is more guided by efficiency than by matter of social justice. We did not only lose a great scholar and one of the pillars of European consumer law, we will miss a friend who was out there with his unlimited preparedness to provide advice and support.