PPGD/FUMEC DISSERTATIONS

LINE OF RESEARCH: PRIVATE AUTONOMY, REGULATION AND STRATEGY

The growing need to promote sustainable economic development, contrasted with the significant regulation of economic activity, with the increasing intervention of the State in business and with the excessive judicialization of legal phenomena, are relevant, contemporary issues and are part of the basis of several scientific and technological problems. practical approaches involving tensions between private autonomy, regulation and strategy.

This situation requires that the Law be recognized not only as a science and a legitimate instrument for resolving conflicts, but as a fundamental element of structuring the objectives of people (natural and legal) and organizations (private and public), so that these can carry out their tasks. strategic objectives with the lowest cost and with the greatest possible efficiency, respecting the normative, philosophical and ethical limits resulting from the Democratic Rule of Law.

In this context, it is essential to develop innovative ideas within the scope of the science of law, as well as the analysis, reflection and propositional criticism of structuring issues, such as, among others: the limits of state intervention in economic activity and private autonomy ; contemporary normativity and the licit structuring of globalized businesses and markets; the freedom to contract; the finalistic and contemporary interpretation of the classic private law institutes; the confrontation between private autonomy and the public interest; the dichotomy between private property and the company's social function; the relations between companies, the State and third sector organizations; the composition of private and public interests in the markets; the inefficiency of the instruments for controlling economic activity; public--private partnerships; the relationships between business models, business planning, the strategic management of organizations and the efficiency of legal planning (tax, corporate, contractual, labor, etc.); the use of typically private legal structures to organize state activity; market domination and free competition; business combinations, mergers and acquisitions; the freedom to act, to think, to inform and to be informed, to undertake.

Start date: 01/09/2014

http://ppg.fumec.br/direito/linhas-de-pesquisa/

PRIVATE ASPECTS OF USUCAPION OF DOMINIC PUBLIC GOODS FROM THE PERSPECTIVE OF THE ECONOMIC CONSTITUTION

CAMILA SOARES GONÇALVES

GONÇALVES, Camila Soares. **Private aspects of usucapion of dominic public goods from the perspective of the economic constitution**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on September 26, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Paulo Márcio Reis Santos

ABSTRACT

The present study aims to analyze the private aspects of the adverse possession of public dominical property, under the perspective of the Economic Constitution, in order to loosen the current prohibition in the constitutional and infraconstitutional text. Considering the fact that dominical property are only formally public, not fulfilling the principle of the social role of property, and may even be alienated, due to disaffection, it becomes fully viable to acquire them by adverse possession. It will be analyzed the constitutional prohibition of adverse possession of public property, distinguishing the types of public property and delving only into dominical assets; and addressing the principles of human dignity, social role of possession and property, supremacy of the public interest and constitutional economic order to, in the end, demonstrate that the ban on the adverse possession of public property is a setback and, therefore, must be relativized, providing the realization of the right to housing and distributive justice. For this purpose, bibliographic research will be used, through the deductive method, with a theoretical framework in the Economic Constitution itself.

Keywords: Adverse possession. Public dominical property. Economic Constitution. Social function of ownership. Right to housing.

OUTSOURCING AND ITS IMPLICATIONS IN PUBLIC ADMINISTRATION: A READING OF THE PRINCIPLES OF LEGALITY AND IMPERSONALITY IN THE USE OF LAW 13.429 / 2017 IN PUBLIC ADMINISTRATION

DANILO FELÍCIO GONÇALVES FERREIRA

FERREIRA, Danilo Felício Gonçalves. **Outsourcing and its implications for Public Administration: A reading of the principles of legality and impersonality in the use of Law 13.429 / 2017 in Public Administration**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on September 28, 2020.
Virtual room on the digital platform "zoom".
Advisor: Profa. Dr. Luciana Diniz Durães Pereira

ABSTRACT

The outsourcing of labor and services is a worldwide trend that started in the Brazilian private sector and has also started to be used by the Public Administration. It is a management tool in order to achieve the public interest, materialized through a contract signed between entities and legal entities under private law, which allows for cost reduction and specialization in the provision of services or supply of goods, in addition to allowing the contractor focus on your core activities, becoming more competitive. As in the private sector, the public administration tries to reduce the state equipment, using partnerships, privatization, privatization and other forms; all of them focused on that goal. The Public Administration has used the instrument of outsourcing public services, especially for secondary activities, such as support functions, in the case of cleaning, surveillance and attendance services, although through other instruments, it has been delegating the provision of services to private individuals. at first they would be of its core activities, a fact widely discussed in the doctrine, mainly after the approval of law 13.429 of 2017. Through outsourcing the service, the contractor passes to the contracted third party the responsibility for the activities in order to be able to concentrate on the best performance and still charge the contractor for quality and efficiency in the contracted service. But if you don't charge for the quality of services through good management, you lose the cost / benefit. Stop this, there was the insertion of some institutes in the legal system accepted by both doctrine and jurisprudence, to regulate state intervention in economic control; the delegation of public services, collaboration agreements with the private sector, such as service provision contracts where outsourcing is inserted. The present work intends to make a reflexive analysis about the outsourcing process in Public Administration, from a legal-administrative perspective. For that, it uses a critical-dialectical methodology based on the analysis of specific norms, including those resulting from New Law n. 13,429 / 2017.

Keywrod: Public Administration. Outsourcing. Principles. Rules. Legality. Impersonality.

DIGITAL CONFLICT RESOLUTION PLATFORMS IN CONSUMER LAW

PAULO EDUARDO DINIZ RICALDONI LOPES

LOPES, Paulo Eduardo Diniz Ricaldoni. **Digital conflict resolution platforms in consumer law**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on October 2, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Daniel Firmato Almeida Glória

ABSTRACT

The Constitution of the Republic of 1988 preamble establishes the Democratic State of Law based on the peaceful settlement of disputes and the article 3º, paragraph 3º of the 2015 Code of Civil Procedure determines that the law operators must encourage self-composition, however, the judicial assets in Brazilian courts demonstrate the litigious trend of the population. In this reality, the average time required to obtain a complete solution to the dispute tends to be of some years, resulting in the dissatisfaction of the population and ineffectiveness of the principle of access to justice. This research aims to analyze the lack of effectiveness of the jurisdictional provision due to the high amount of law suits in process and propose the use of self-composed alternative dispute resolution (negotiation, mediation and conciliation) to ensure the principle of access to justice, the reduction of the judicial assets and the possibility of resolving the deal in less time and in a satisfactory manner. Specifically, it will focus on Consumer Law, which most of the actions will be of the special courts jurisdiction, therefore, as they are guided by procedural economics and search for conciliation or transaction, it is perfectly suited for these methods, especially through digital platforms. Finally, in order to prove the hypothesis of the benefits that extrajudicial selfcomposition will be enabled to citizens and the State, three digital conflict resolution platforms that operate in Consumer Law were studied. For the paper, the hypotheticaldeductive method was used, through a bibliographic search in books, dissertations, theses, videos, magazines, websites, laws, jurisprudence, among others, having as theoretical framework the Constitution of the Republic of 1988 and the Code Civil Procedure 2015 to understand how society and the State behave in the face of conflicts and, based on a data analysis, analyze the number of processes in progress in the country.

Keywords: Access to justice. Consumer law. Alternative dispute resolution. Digital conflict resolution platforms. Consumer society.

POLITICAL ASPECTS IN THE MATTER OF HISTORIC EVOLUTION OF SHARED GUARD IN BRAZIL

CARLOS ROBERTO DE OLIVEIRA

OLIVEIRA, Carlos Roberto de. **Political aspects in the matter of historic evolution of shared guard in Brazil**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on October 9, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Antônio Carlos Diniz Murta

ABSTRACT

Shared custody was an innovation brought in the legal system with Law n. 11.698/2008. The institute has been widely used and still raises doubts and questions in the legal community. In view of this, the present work aims to study the current challenges of shared custody and present arguments in favor of the autonomy of family law, in view of its specificities. To arrive at the conclusions of this work, an introductory chapter was elaborated to deal with the family, addressing its evolution and also the legislative changes that occurred over the years, with the development of society. After that, the next chapter was dedicated to the treatment of types of custody admitted in the Brazilian legal system, in addition to a brief history of the emergence of shared custody in the world and the legislative treatment of parental alienation in Brazil. Subsequently, there is a chapter aimed at presenting Family Law as an interdisciplinary branch and with many peculiarities, in view of this, arguments are presented in favor of its legislative autonomy, through a Statute of families. This chapter also discusses Bert Hellinger's family constellations and their use by the Brazilian judiciary. Finally, the last chapter is dedicated to the practical treatment of shared custody, going through its positive and negative aspects and the problematizations that still persist in doctrine and jurisprudence. The research method adopted here was the deductive one through the bibliographic research of works, articles, dissertations and specific theses about shared custody and also the research in works of Family Law. The main theoretical frameworks adopted by this work can be mentioned by lawyers Nelson Rosenvald, Cristiano Chaves de Farias, Maria Berenice Dias and Luiz Edson Fachi. It is preliminarily concluded that Family Law in view of its specificities must merit its own legislative treatment, separate from the Civil Code and the shared Guard is in constant study and progress, in view of the new situations that are presented in this work.

Keywords: Shared custody. Family relationships. Children's rights. Autonomy Family law. Interdisciplinary view of the guard.

CORPORATE LEGAL RISK MANAGEMENT AS A STRATEGY FOR BUSINESS SUSTAINABILITY: APPLICABILITY OF ISO 31000 AND ISO 31022 STANDARDS

LUCIANA PROCOPIO BUENO

BUENO, Luciana Procópio. **Corporate legal risk management as a strategy for business sustainability: applicability of ISO 31000 and ISO 31022 standards**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on November 19, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Frederico de Andrade Gabrich

ABSTRACT

Companies currently occupy a relevant role in the Brazilian economic, social and political scenario because they provide development and progress by providing, directly or indirectly, the subsistence of a significant part of their population. When producing and circulating goods and services, organizations are also responsible for a significant amount of the State's tax revenues and for boosting technological advances and innovation, becoming the center of the contemporary economy. Due to its obvious social function, corporate sustainability is an object of interest to the entire community. Legal rules regulate a significant part of relationships and businesses, in such a way that companies are exposed to different types of legal risks, especially due to the relationship with a large number of stakeholders, such as customers, suppliers, business partners. , State and society, in addition to the particularities of each organization and its market segment. Understood from a systemic concept of company survival, corporate sustainability requires critical thinking about the strategic relevance of companies, as well as the criticality of the risk represented by the progressive judicialization (especially in companies). This directly affects competitiveness, flexibility of the labor market and production costs, by committing part of the billing and profit to payment or provisioning to face high cost lawsuits. From this perspective, this research seeks to establish an answer to the problem of the need to adopt effective strategies for the management of corporate legal risks that provide alternatives for the business and the creation of value for the interested parties. Based on the analysis of how this corporate legal risk can be identified, measured, controlled, mitigated and, when possible, eliminated, in addition to the recognition of opportunities for its exploitation or maximization, strategic risk management and the establishment of competitive advantages in the business environment. For this study, the deductive scientific method was adopted, developed based on the theoretical references of Zygmunt Bauman, Ulrich Beck, Anthony Giddens, Alfred Marshall, Joseph Schumpeter, Aswath Damodaran, Michael Porter, Cássio Machado Cavalli, Fabio Konder Comparato and Frederico Gabrich.

Keywords: Corporate Legal Risk. Strategic management. Corporate sustainability. ISO 31000. ISO 31022.

THE POSSIBILITY OF DIGITAL INHERITANCE IN THE LIGHT OF THE BRAZILIAN LEGAL ORDER

VICTOR WERNECK GOMES

GOMES, Victor Werneck. **The possibility of digital inheritance in the light of the Brazilian legal order**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on November 27, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Paulo Márcio Reis Santos

ABSTRACT

Brazilian legislation has not kept up with so many new developments in possible innovations in the modalities of interaction in modern private life. The last few decades in Brazil have been characterized by changes in personal relationships, in which more and more people are digitally interconnected, basically spending their entire life allocated on digital devices connected to the Internet. Having no legal regulation for most of the activities of individuals in a virtual environment, consequently there is no regulation for sharing content on the Internet, which can be these texts, videos, photos and others, as well as there is no type of legislative provision for digital goods acquired only in virtual form on the Internet. The justification and motivation of this work is the fact that the digital assets provided for in the individual's assets, in the absence of legislation and regulations, end up being lost in succession. The central hypothesis of this research fits into a possibility of directing the transmission of digital goods after death in a kind of inheritance, called digital inheritance. The general objective is to define how digital inheritance would occur, analyzing digital goods and their characteristics and what conflicts may occur in relation to other rights in the legal system. The aim is to relate the inheritance rights and the predictions already existing to adapt to digital assets, investigating whether there is a possibility of a digital inheritance and testamentary ways to dispose of digital assets. It is necessary to investigate how digital assets protected by personality rights could conflict with the inheritance, in order to finally seek to relate the current reality of the theme in Brazil and propose whether there is a need for change in rights successions provided for in Brazilian law. It is a research in an interdisciplinary perspective, adopting deductive as the predominant reasoning, with the work developing from a bibliographic research, being directed to the areas of Civil Law, Digital Law and Constitutional Law. Regarding the nature of the data, the primary data deals with the research of laws, bills, doctrine and jurisprudence, with secondary sources being official and statistical data from national and international bodies and companies, as well as the research of Brazilian or foreign studies in the area of Law. Civil, Digital Law and Constitutional Law linked to digital assets and digital heritage, being a bank of theses and dissertations, in addition to periodicals.

Keywords: Heritage. Digital inheritance. Digital goods. Civil right. Digital law.

COLLECTED CONTRACTS, DEFAULT AND CIVIL RESPONSIBILITY: AN INVESTIGATION IN THE LIGHT OF THE ASSUMPTIONS OF PRIVATE AUTONOMY AND STRATEGIC ANALYSIS OF LAW

FERNANDO DE SOUZA AMORIM

AMORIM, Fernando de Souza. **Collected contracts, default and civil responsibility: an investigation in the light of the assumptions of private autonomy and the strategic analysis of law**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on November 30, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Paulo Márcio Reis Santos

ABSTRACT

This research has as its theme the contractual coalition, an institute that is verified when there is a plurality of legal businesses that are valid and able to produce effects and connection between them but not concluded between the same parties. In the light of the assumptions of private autonomy and the Strategic Analysis of Law, it is asked, as a research problem, whether in the linked contracts there is civil co-responsibility of a contracting party unaware of the defaulted contract, but part of the network of related contracts. Also, it questions whether a contractor who is part of a contractual coalition network is liable for damages caused to a contract other than that of which he is a member, because of the incidence of the objective good faith principle. As a hypothesis, it is stated that, despite the contracts that make up the network being formally autonomous and subject to specific legal regimes, their treatment must consider their existence as a system. Thus, the incidence of the principle of objective good faith imposes on the related contractors the limitation to the exercise of subjective rights and the incidence of annexed or instrumental duties of conduct in the coalition's face as a system and not just the individual pacts. The general aim of the research is to demonstrate the legal effects of the linked contracts, especially in the possibility of recognizing the civil co-responsibility of the contractors that are part of the contract network in case of default and under what modality (contractual or non-contractual), besides its practical repercussion in the economic market in the light of the assumptions of private autonomy and the Strategic Analysis of Law. The research adopts, as theoretical references, the concept of related contracts proposed by Francisco Paulo de Crescenzo Marino, the notion of objective good faith proposed by Judith Martins-Costa, besides the concept of Strategic Analysis of Law by Frederico de Andrade Gabrich. As for the other methodological aspects, the research is developed in a legal-dogmatic methodological aspect, using hypothetical-deductive reasoning. This is theoretical research and, about the generic type, it is classified as legal-comprehensive or legal-interpretative. About the mode of analysis of the sources, this research is classified as qualitative and is interdisciplinary, combining concepts of Civil Law, Constitutional Law, Jurisprudence, Philosophy of Law, and Strategic Analysis of Law. The research uses primary and secondary data and, as a methodological procedure and technique for collecting information, the bibliographic survey.

Keywords: Linked contracts. Tort law. Principle of objective good faith. Legal effects. Default. Strategic Analysis of Law.

THE (DIS) PROTECTION OF PEOPLE WITH INTELLECTUAL AND MENTAL IMPEDIMENTS IN THE LIGHT OF THE CURRENT THEORY OF DISABILITIES AND THE CONTEXT OF THE STATE OF MINAS GERAIS

ELIANA GUIMARÃES PACHECO

PACHECO, Eliana Guimarães. **The (dis) protection of people with intellectual and mental impediments in the light of the current theory of disabilities and the context of the State of Minas Gerais**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on December 2, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Paulo Márcio Reis Santos

ABSTRACT

The present research has as its theme the alterations processed in the theory of disabilities carried out by the Statute of Persons with Disabilities, which incorporated into the Brazilian legal system the precepts of the Convention on the Rights of Persons with Disabilities, to which Brazil is a signatory. It is asked, as a research problem, and because of these changes, whether it was incurred in lack of protection, especially aggravated in the State of Minas Gerais, considering the statistical data of individuals with mental and intellectual impairments. As a hypothesis, it is stated that the legislative changes, recognizing the full capacity of people with mental or intellectual disabilities, without a framework for in-depth study of the consequences, provided equal treatment to essentially different people. The general aim of the research is to investigate whether, for the mentally and intellectually disabled, effective protection was performed in correspondence to the specificities of each individual, and to understand the business freedoms of the person with a mental disability, and the role third parties in exercising those rights. As a theoretical framework, the research adopts the criticisms made by Zeno Veloso, José Fernando Simão, and Taisa Maria Macena de Lima, who emphasize the mismatch between the current rules of disability theory and the complexity of people with mental and intellectual impairments. As for the other methodological aspects, the research is inserted in a legal-social perspective, adopting the hypothetical-deductive reasoning as the predominant reasoning. The research is bibliographic and interdisciplinary, combining concepts from Civil Law, Theory of Law, and Psychiatry.

Keywords: Brazilian Statute of Persons with Disabilities. Mental and intellectual impediments. Theory of disabilities. Lack of protection. Minas Gerais state.

THE USE OF MUSIC IN THE TRANSDISCIPLINARY TEACHING OF LAW: AN APPROACH TO THE RIGHT TO EDUCATION

ROSELAINE ANDRADE TAVARES

TAVARES, Roselaine Andrade. **The use of music in the transdisciplinary teaching of law: an approach to the right to education**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on December 11, 2020.
Virtual room on the digital platform "zoom".
Advisor: Prof. Dr. Frederico de Andrade Gabrich

ABSTRACT

The teaching of Law needs to be increasingly transdisciplinary and developed through active methodologies. This is also due to Resolution no. 5/2018, from the Ministry of Education. But this is still a problem for many professors in law courses, who do not know how to really use active methodologies, nor how to be transdisciplinary. Based on the deductive method and based on the work of professor Mônica Sette Lopes, "Uma metáfora: música e direito", the objective of this research is to demonstrate the effectiveness of the method of using music to improve the active and transdisciplinary learning of Law in undergraduate courses, from the analysis of the right to education, and prove that the requirements set out in Resolution no. 5/2018 of MEC, especially that of transdisciplinarity, can be achieved by applying Brazilian popular music to the teaching of law since music is a good didactic option, notably because it stimulates skills that would not be developed from exclusively instructive methodologies education.

Keywords: Law. Education. Music. Transdisciplinarity.

ADMINISTRATIVE APPROVAL OF THE REQUEST FOR EXTRAJUDICIAL RECOVERY AS A PROPOSAL FOR DEBUROCRATIZATION AND DEJUDICIALIZATION

THIAGO CORTES REZENDE SILVEIRA

SILVEIRA, Thiago Cortes Rezende. **Administrative approval of the request for extrajudicial recovery as a proposal for deburocratization and dejudicialization**. 2020. Dissertation (Master in Law). Minas Gerais Education and Culture Foundation - FUMEC. Faculty of Human, Social and Health Sciences, Postgraduate Program in Law. Belo Horizonte, 2020.

Defense on December 21, 2020.
Virtual room on the digital platform "zoom".
Advisor: Profa. Dra. Danúbia Patrícia de Paiva

ABSTRACT

The present study has as main objective to demonstrate that the national policy of judicialization and de--bureaucratization of the Judiciary stamped in Provision nº 125/2010 - CNJ, materializes at the moment when legislative measures are put into effect with the intention of reaching this end. Thus, as with the request for recognition of extrajudicial usucapion inserted in the national legal system through Law No. 13,105 / 2015, as well as the possibility of carrying out inventories, shares, consensual separation and consensual divorce through the administrative route authorized by Law no. 11,441 / 2007, it is believed, analogically, imbued with the detrimental core, that the notary of protests of titles and debt documents, after the issuance of a competent law, could be the administrative authority responsible for ratifying the request for extrajudicial recovery, thus suppressing, the judicial homologation required by article 162 of the Bankruptcy Law (Law No. 11,101 / 2005), removing numerous lawsuits from the Judiciary. Such procedure, deductively from the others mentioned above, would begin and be concluded within the scope of extrajudicial services of securities protests. Thus, the withdrawal of cases from the Judiciary makes justice faster, more effective and more economical, providing more sustainable national economic development. This initiative is in line with the new political-legal scenario fostered by the national judicial policy of adequate treatment of conflicts of interest within the scope of the Judiciary and by Provision No. 72, of 07/27/2018, of the same body, which provided for incentive measures the settlement or renegotiation of debts protested in the protest notaries in Brazil. To base this study, the deductive scientific method will be adopted, with the analysis of laws, doctrines, scientific articles, as well as more recent jurisprudence on the subject. As a result, it will be deduced that, in the same way as with judicial usucapion, judicial separation and divorce, now extended to the extrajudicial, after drafting a competent law, the protest notaries, public agents endowed with notary public faith, drivers of de-bureaucratization and dejudicialization of the Judiciary, should be able to ratify the request for extrajudicial recovery, and it is up to the citizen to also use the judicial route.

Keywords: Notary. Protests. Extrajudicial recovery. Judicialization. Notaries.