

Introduction

This book aims at explaining the interrelationships between the economic elements and the legal principles with reference to business and company law. Three jurisdictions are taken into consideration: US, UK and Italian law (the latter, chosen as prototype of continental European legal systems). In addition, since Italy is a member state of the European Union that harmonizes, through Regulations and Directives, company law among European member states, an introduction to European company law will be covered by the book¹. The economic elements that lie at the ground of business and company law are actually common to the three legal systems and, consequentially, legal principles and rules are very similar despite one jurisdiction (namely, Italy) belongs to the civil law and the other two to the common law legal families². Similarity also depends on historical origins of the legal instruments that are covered by the book: partnerships law traces back to Roman law while company law traces back to English law. Roman law and English law have influenced, respectively, the law of partnerships and of companies worldwide.

I have followed the traditional format of separating the law of proprietorships, of partnerships, and of companies. Each topic is covered by, firstly, identifying the economic and legal elements that are shared by the three jurisdictions and, then, by dealing with each jurisdiction separately for individual specificities.

¹ It is worth pointing out that there is no European Union legislation with reference to proprietorships and partnerships, subjects that are regulated by each European member state.

² According to the traditional classification formerly theorized by David R (1964) *Les Grands Systèmes de Droit Contemporains*. Dalloz, Paris, the diversity of the world's legal systems is not random but groups of countries share common features in terms of legal history, legal thinking and positive rules. To summarize, the civil law family (in general) is based on Roman law with the influence of German Universities tracing back to the XIX century and is characterized by codification of law and consequential role of academics in the interpretation of written legislation. By contrast, the common law is judge-made law, based on cases where legal precedents are binding on future cases showing similar facts (so-called principle of *stare decisis*); pragmatism is relevant. However, more recently, classification into legal families has been criticized as it does not provide an accurate picture; it might "cause more harm than good", see Siems M (2014) *Comparative Law*. Cambridge University Press, Cambridge, p 93.

It will be interesting to observe that the characteristics of the legal family have few consequences on the legal principles and rules that have been developed in the jurisdictions with reference to business and company law. This is no surprise as modern comparative lawyers have been doubtful of the validity of some generalizations on the difference between civil law and common law: legal precedents, for example, do play significant role in European continental legal systems; codes are less all-embracing in practice than they may be in theory with various and different special legislations being enacted continuously along the code³. In addition, written pieces of legislations are very common and frequent in USA and UK especially in our field of business and company law, as will be shown. However, some differences still remain. As masterfully explained with reference to English law in particular, “despite this quantitative superiority of modern legislation, it remains, in many ways, true to say that case law reflects the spirit of English law far more than legislation does” and, moreover, most legislation in UK and US “is not drafted in the form of a statement of true principles, broad generalizations” but “in the form of a set of specific rules, *ad hoc* solutions to particular problems”; “the detailed and crabbed style of legislative drafting means that it becomes almost impossible for the Courts to draw principles from legislation”⁴. Therefore we can argue that the fundamental difference between civil law and common law is that: the common law [i.e. cases] remains the true repository of principles”, “judges ...make the law” whereas in civil law the true repository of principles remains the legislation. Also the style of English cases, compared with European continental cases, is different with the latter showing “far less detail in the analysis of the facts of cases”. Furthermore, a difference lies in the role of academics under English law versus the civil law (in this respect, US is similar to civil law): under English law the role of academics is modest, the purpose of the English textbooks is not a creative exercise; academics simply read up the law (made by judges) and try to reduce it to some sort of shape or order⁵. By contrast, in civil law and US legal systems the opinion of academics is highly regarded and their interpretation of legal provisions very important. Finally, it will be worth noting and highlighting that, with reference to company law in particular, it is not correct to equate UK and US law as “Anglo-Saxon” jurisdictions (as too often and too simplistically, unfortunately, it has been mystified): there are indeed fundamental differences, in company law, between these two jurisdictions despite they both belong to the common law family, as will be shown.

Following the same pattern in the whole book (identifying the economic el-

³Atiyah PS (1987) *Pragmatism and Theory in English Law*. Stevens & Sons, London, 1987, p 2.

⁴ *Ibidem*.

⁵ *Ibidem*.

ements first and then covering common legal principles and core provisions in each jurisdiction), I start by dealing with the law of proprietorship (Chapter 1). I then address the law of partnerships (Chapter 2). Moreover, I deal with company law analyzing US (Chapter 3), UK (Chapter 4), and European Company Law with a special focus on Italy (Chapter 5). The style of the book is characterized by making reference to various factual examples in presenting the topics and by using often a colloquial and dialectical language, in order to make the subject more interesting and understandable in particular for students.

The book is the result of my studies conducted in: Italy, Great Britain (Oxford University), United States (Harvard Law School and Stanford Law School, primarily) during the last thirty years and more. But it is also the outcome of my over fifteen years of teaching the course of “Law and Economics (Business and Company Law)” at Luiss G. Carli University of Rome (Italy) within the Bachelor Degree of Economics and Business that is attended by both Italian and international students. The choice of these three jurisdictions certainly depends on my past studies - as comparative company lawyer in my academic career I have been mainly studying these three jurisdictions and, of course, European law - but also depends on the need to introduce international students, having different backgrounds, to three legal systems that are fundamental in the field of Business and Company Law: i.e. Italian (deriving from Roman law that shaped the law of partnerships worldwide and, with reference to companies, mainly regulated by European company law that therefore is common also to the other member states in many respects as will be explained), UK (where the first form of company limited by shares was born in the seventeenth century), and US where the biggest corporations in the world were born and have developed.