

UNIVERSITATEA „BABEȘ-BOLYAI” CLUJ-NAPOCA
FACULTATEA DE DREPT

TEZĂ DE DOCTORAT
(rezumat)

Conducător de doctorat:
Prof. univ. dr. Ion TURCU

Student-doctorand:
Sergiu GOLUB

2014

UNIVERSITATEA „BABEȘ-BOLYAI” CLUJ-NAPOCA
FACULTATEA DE DREPT

FIDUCIA ȘI OPERAȚIUNILE FIDUCIARE

Conducător de doctorat:
Prof. univ. dr. Ion TURCU

Student-doctorand:
Sergiu GOLUB

2014

CUPRINS

LISTA PRESCURTĂRILOR

INTRODUCERE

CAPITOLUL 1. FIDUCIA. NOȚIUNI INTRODUCTIVE

1.1. Noțiune

1.1.1. *Definiția legală*

1.1.2. *Definiții doctrinare*

1.2. Trustul și fiducia în alte sisteme juridice

1.2.1. *Fiducia romană*

1.2.2. *Trustul în common law*

1.2.3. *Reglementarea fiduciei/trustului în Codul civil al Québecului*

1.2.4. *Reglementarea fiduciei în codul civil francez*

1.2.5. *Reglementarea fiduciei în Codul civil al Republicii Moldova*

1.2.6. *Reglementarea fiduciei în Codul civil al Federației Ruse*

1.2.7. *Reglementarea fiduciei/trustului în convenții internaționale și proiecte de convenții europene sau internaționale*

1.2.8. *Câteva considerații cu privire la idea de „transplant juridic”*

1.3. Analiza definiției legale

1.3.1. *Genul proxim*

1.3.1.1. *Fiducia – „operațiune juridică”*

1.3.1.2. *Fiducia - contract*

1.3.1.3. *Fiducia – act unilateral?*

1.3.2. *Diferența specifică*

1.3.2.1. *Constitutorul (ii)*

1.3.2.2. *Noțiune de „transfer”*

1.3.2.3. *Obiectul „transferului”*

1.3.2.4. *Problema transferului de „pasiv”*

1.3.2.5. *Fiduciarul (ii)*

1.3.2.6. *„Scopul determinat”*

1.3.2.7. *„Masa patrimonială autonomă”*

1.3.2.8. *Beneficiarul (ii)*

1.4. Delimitarea fiduciei de alte operațiuni

1.4.1. *Fiducia și contractul de report*

1.4.2. *Fiducia și contul escrow*

1.4.3. *Fiducia și stipulația pentru altul*

1.4.4. Fiducia și substituțiile fideicomisare

1.5. Concluzii

CAPITOLUL 2. CONTRACTUL DE FIDUCIE ȘI EFECTELE SALE

2.1. Părțile contractului de fiducie

2.1.1. Constitutorul

2.1.2. Fiduciarul

2.1.3. Beneficiarul

2.2. Caracterele contractului de fiducie

2.3. Condițiile de fond

2.4. Condițiile de formă

2.5. Efectele contractului de fiducie

2.5.1. Efectele între constitutor și fiduciar

2.5.2. Efectele între fiduciar și beneficiar

2.5.3. Efectele între constitutor și beneficiar

2.6. Concluzii

CAPITOLUL 3. PATRIMONIUL DE AFECTAȚIUNE

CAPITOLUL 4. ADMINISTRAREA BUNURILOR ALTUIA

CONCLUZII

ANEXE

FIDUCIA ÎN CODUL CIVIL FRANCEZ

FIDUCIA ÎN CODUL CIVIL QUEBEC

FIDUCIA ÎN CODUL CIVIL AL REPUBLICII MOLDOVA

REGLEMENTAREA FIDUCIEI ÎN CODUL CIVIL AL

FEDERAȚIEI RUSE

BIBLIOGRAFIE

Cărți:

Articole, Studii:

Summary

The Civil Code, still new, even if two years have passed since it came into force, has brought, in addition to a rearrangement and renewal of old institutions, some new ones: among them, with a name slightly exotic and full of symbolism – *fiducia*. Its Latin name, borrowed from the goddess Fides¹, indicates the Roman origins of this operation. Despite that, the institution itself, recognized in many legal systems all over the world, is anything but a unitary institution, with the same meaning or content². *Fiducia* (the equivalent of *trust* from the *common-law*

¹ *Fides* is the Roman mythology goddess of good-faith, the personified symbol of loyalty. According to the tradition, her cult has been established by the king *Numa Pompilius* and has always been religiously linked to Jupiter. The Roman temple of the Fides goddess was built (approx. 254 B.C.) near the Capitol; the sacrifices were made having the hands symbolically covered in order to keep the sacredness of the secret. The goddess sign was represented by the same symbol – to holding hands. The cult for Fides probably appeared during the Roman royalty, when the Roman people were building its society principles. The goddess was patronizing back then the loyalty regarding agreements and contracts. The priests were bringing sacrifices having their right hand (symbol of understandings and joinder) covered with a piece of cloth. Aside from that, the coins, having on the obverse the effigy of the goddess Fides, had the same symbol of the right hand as a guarantee for contracts enforcement. (<http://ro.wikipedia.org/wiki/Fides> 14.03.2013); *Fides* was the Roman personification of the Given Word. It was represented by an old lady with white hair, older than Jupiter himself, which was meant to highlight that the respecting the given word was the foundation of any social or political order. *Rhome*, *Enea*'s niece, had devoted a temple on the Palatine Hill. Sacrifices were offered with the right hand being covered by a white cloth. (Greek and Roman Mythology Dictionary, Ed. *Saeculum* I. O., București, 2001, *Fides*).

² As we will show further, in many legal systems, this institution has no real convergence except the Roman name *Fiducia*.

systems) represents a typical example of an institution with a legal regime that varies depending of the legal system we refer to. It is important to mention that despite the apparent similarities to the Roman operation, at least the etymological ones; the institution has suffered strong metamorphosis inside each legal system, repudiating the Roman model. It became an equation with diachronic and geographical variations, with high complexity and “native” polymorphic – all of which represent the motivation addressing this issue.

The novelty element of this issue within the Romanian judicial landscape is obvious. The two years old institution is still almost untapped, both theoretically³ and practically⁴. Even if the purpose of the operation could be achieved by mechanisms already known to our system, a single “instrument”⁵ (weather it would be a contract, an operation or a real estate right) that would provide the same function doesn’t exist. Therefore, some features of the trust can be found within concepts typical to continental legal systems, such as: the revocable or irrevocable mandate, agency or representation agreements (including agents acting secretly on behalf of principal), fee contracts, the fiduciary arrangements having as a legal basis the concepts derived from *fiducia cum amico* or *fiducia cum creditore* recognized within the Romanian legal system, the marriage or business partnerships regarding assets that are distinct from the private wealth of individuals that constitutes them,

³ At a certain moment, a joke was circulating, perfectly in accordance with the reality, that there are more scholar reviews on the concept of *fiducia* than the operation itself.

⁴ In accordance with the statistics provided by the Electronic Archive of Security Interests, by 21.06.2013 there were 21 initial entry notices, meaning there were 21 fiduciary contracts. To our knowledge, the scholar reviews were fewer back then...

⁵ We have intentionally used the generic term of “instrument” due to the fact that *fiducia* is regulated as a real estate right, cloned by the French contract and defined as a legal operation (art. 773 Civil Code).

the assets of the deceased that constitutes a distinct part of the heir heritage until the heir accepts the succession, the concept regarding a supplier of goods that reserves the right to property of those goods, being entitled to a portion of the revenue that comes from the sale of those goods (if they can be identified enough) following the effect of the subrogation into the rights of the buyer⁶. The cited above mentions the trust and not the *fiducia*. However, within certain limits and reserves, all of the mentioned above regarding the trust can be adapted to the concept of the *fiducie* (both the French and the Romanian concept).

As a consequence, *fiducia* is not a new concept anymore. The modest use of the concept, especially within the business environment, is due to its novel and complex feature (as well as due to imperfect legislative regulation). Most certainly, once these problems are overcome, a frequent use of the operation should be expected.

The importance of the issue addressed in the following thesis is obvious. Instead of using a number of the above mechanisms that provide the needed result only if they are combined (which can frequently cause compatibility or synchronization issues), *fiducia* ensures the result directly. The same above cited author concludes the following: the concept of the trust is a polymorph one, much more versatile and powerful than any other above mentioned concepts⁷.

Naturally, a Romano-Germanic lawyer cannot be as excited as a *common-law* one. The reactions caused by the

⁶ D. Hayton, *Trusts in international European private law*, in *International and Comparative Private Law*, Ed. Sfera Juridică, Cluj-Napoca, 2006, p. 285-286. See also Dan Chirică, *Fiducia within New Civil Code*, in *The New Romanian Codes. Studies and Legal Research*. Ed. Universul Juridic, București, 2011, p. 186.

⁷ *Ibidem*.

reception of the *common-law* trust⁸ may vary: from euphoria to a hostility regarding any attempt by the continental legislators in borrowing the mentioned institution.

„Reaction to hearing the “trust” may well be one of caution and fear because it is natural to be fearful of what one does not really understand. The word is versatile and chameleonic-like, taking its meaning from its context, which has to be closely examined to reveal the full ramifications of the concept. The concept also has much historical baggage that makes it taken for granted in *common law* jurisdictions but makes it difficult to comprehend in other jurisdictions”⁹.

Despite all that, this chameleonic institution started to be received on a large scale within the continental legal systems. Obviously, the methods and the techniques involved and used by the national legislators are different, as well as different are the results obtained due to these acquiring processes, either they be longer or for a shorter period.

For example, in France, this receiving process took a long a very time¹⁰. There have been many attempts¹¹, a

⁸ We will refer to the British and USA trust. Even within *common-law* systems many varieties of trusts are known. See also the concept of trusts from Scotland or from South Africa.

⁹ D.J. Hayton, S.C.J.J. Kortmann, H.L.E. Verhagen, *Principles of European Trust Law*, Kluwer Law International – W.E.J. Tjeenk Willink, 1999, p. 29.

¹⁰ Genèse de la loi instituant la fiducie en France. - La fiducie, qui, de manière résumé, implique le transfert de droits patrimoniaux par une personne (le constituant) a une autre (le fiduciaire), a charge pour ce dernier de réaliser une affectation déterminée au profit d'un bénéficiaire (V. C. civ., art. 2011), a été longtemps méconnue en France. Toutefois, a la fin des années 1980 et au début des années 1990, des avant-projets de loi relatifs a la fiducie ont été préparés, des colloques et autres travaux y ont été consacrés, et, le 20 février 1992, un projet de loi instituant la fiducie fut déposé sur le bureau de l'Assemblée nationale. Ce

large scale of mechanisms, both fiduciaries and *quasi-*

projet ne fut jamais mis en discussion. La conjonction de craintes fiscales et d'absence de volonté politique suffisamment marquée l'explique sans doute, Fr. Barriere, *Fiducie*, Rep.civ.Dalloz, janvier 2008, mise a jour 12/2010, studiu inspirat din articolul: La fiducie. Commentaire de la loi n 2007-211 du 19 février 2007, Bull.Joly2007.440 și 2007.556.

“Pendant longtemps, le fiducie este restée absente du système juridique français si bien qu'on a pu la qualifier de *belle juridique au bois dormant* (Cl. Champaud, *La fiducie ou l'histoire d'une belle juridique au bois dormant du droit français*, RDAI 1991-689.) ou encore d'*Arlesienne* ... Cette absence était justifiée tant par des raisons théorétiques, telles que les principes d'unicité du patrimoine et de la propriété, que par de raisons pratiques, le spectre d'évasion fiscale et du blanchiment étant très présent. Cette carence n'a cessé d'être dénoncée par les universitaires comme par les praticiens conscients d'une part de la nécessité, pour faire face au développement de la mondialisation économique et de la globalisation du trust, d'instituer un *mécanisme apte à répondre à la vive concurrence* que le trust ferait aux institutions civilistes sur le territoire (M. Cantine-Cumyn, *L'avant-projet de la loi relatif à la fiducie, un point de vue civiliste d'outre atlantique*, D. 1992 Chron. p. 117 n. 1) et d'une autre part, de l'ampleur des besoins pratiques, notamment en matière de transmission successorale et de sûretés, de recourir à un tel mécanisme. Pourtant, malgré ce plaidoyer en sa faveur et malgré l'existence de projets de loi, l'introduction de la fiducie en France était restée lettre morte pendant plus de quinze ans”, Bouteille Magali, *La fiducie. Un potentiel inexploité*, disponibil la <http://cnriut09.univ-lille1.fr/articles/Articles/Fulltext/75a.pdf>

¹¹ Proiectele din anii 1989, 1992, 1995. Attendue depuis de nombreuses années, la fiducie vient finalement d'être intégrée en plusieurs étapes dans notre droit positif. La loi du 19 février 2007 fait suite à plusieurs projets, qui tous, ont avorté, succombant aux craintes de détournement du mécanisme de la fiducie aux fins soit de fraude ou d'évasion fiscale, soit de blanchiment d'argent exprimées par chaque gouvernement en place, Al. Berdah, *La fiducie, în Specificitate și complementaritate în dreptul privat european. Conflictele de legi și jurisdicții și integrarea juridică europeană*, coord. Dan Andrei Popescu, Editura Hamangiu, București, 2012, p.

fiduciaries (les fiducies avant la fiducie) being used in practice. The practice tried to look for friendlier jurisdictions¹², the jurisprudence also having a say regarding the validation of these mechanisms, the legislator as a consequence not being able remain impassible to these realities¹³.

The Romanian legislator couldn't as well remain immune to the international fluctuations of the *fiducia*, eternally going for the French model in 2009 without any hesitations, researches, pulses from the practice or incentives from the jurisprudence and without any public debate on the subject of regulated *fiducia*. As we have already suggested, the regulation hasn't been quite original. It wasn't generated by the needs and realities of the

¹² *Utilisations du trust par des entreprises françaises.* - Les sociétés françaises ont eu recours au *trust* pour satisfaire certaines opérations. Ainsi en est-il, par exemple, des défaisances (*economic in substance defeasance*) : des sociétés françaises souhaitant alléger le passif de leur bilan (par exemple la société Peugeot en 1987) ont recours à un *trust* auquel a été transféré le service de la dette, moyennant un transfert de liquidités ou de titres devant permettre d'en assurer le remboursement. Ainsi en est-il également de certains rapprochements d'entreprises : lors des opérations Terra Laval/Sidel et Schneider/Legrand en 2001 (deux offres publiques d'acquisition impliquant des sociétés françaises et rentrant dans les seuils de contrôle de la concurrence communautaire), la presse a révélé que les actions acquises suite aux offres publiques et dans l'attente de l'éventuelle autorisation communautaire ont été mises en *trust*, ce qui peut paraître déconcertant, les actions acquises étant régies par le droit français (la Commission Européenne a depuis - le 2 mai 2003 - institué un contrat type de *trust* pour ce type d'opérations). Alstom, lors de sa restructuration en 2003, a également eu recours au *trust* ; la Française des Jeux l'utilise actuellement afin de structurer le jeu « Euromillions ». Signe d'une lacune du système juridique français, pauvreté (relative) qui impose de franchir les frontières pour assouvir des utilités pratiques, Fr. Barriere, *Fiducie*, Rep.civ.Dalloz, janvier 2008, mise à jour 12/2010, pct. 15.

¹³ Undeniably, the enforcement mechanism is a different discussion that will be addressed at the right moment.

practice¹⁴. Instead, it was transplanted – legally speaking. However, the rules haven't been completely respected - two main sources being mixed that later have undergone a comprehensive process of accommodation. In context, what we obtained can be called *fiducia a la roumaine*¹⁵.

Even if these appreciations address different judicial institutions, we do consider that the following are perfectly current and applicable and to the concept of *fiducia*:

“The consequence is that the private continental law tends to acquire a metaphysical feature due to the fact that sometimes tries to create new realities through regulations, although history shows that the law is efficient only if it reflects the existent realities and takes into account the requirements of the practice. Aside from that, we can observe that overbidding the role of regulation in regulating social relations generates a legislative inflation that leads fatally to adopting contradictory and inconsistent decisions in situations that could have been easily solved by applying principles and judicial mechanisms enshrined during the evolution of law (the arbitration promise, interdictions, stipulations made by order of the magistrate, *restitutio in integrum*, waiver before the magistrate)”¹⁶.

Accordingly, we do consider that in order to establish the legal nature of the Romanian *fiducia* it is necessary a prior study of the sources of this operation. Therefore, a

¹⁴ See also M. David, *The European experiment of fiducia – realities and perspectives -*, in *Law and Rights – tradition and modernity. In honorem Ion Deleanu*, Ed. Universul Juridic, București, 2013, p. 107-126.

¹⁵ Paraphrasing two sources that ironically aimed the originality of the French *fiducia*: C. Charvillat – Carrez, *Introduction de la fiducia a la française*, RLDA avr. 2007.31; S. Camara Lapuente, *Trust a la francesa*, InDret, mai 2005, no. 283 (available on www.indret.com).

¹⁶ E. Molcuț, *The role of formality in the evolution of law*, in *In honorem Corneliu Bîrsan*, Ed. Hamangiu, Law Review, București, 2013, p. 906.

basic study of the Romanian and French *fiducia*, of the *common-law trust* and the Québécoise *fiducia* is necessary and advisable.

After a concise display of the legal definition and of the most important doctrinal definitions, a short analysis was made regarding the legal systems mentioned above. We have tried to capture the existing legal reality when developing the current thesis. It is obvious that an innovation attempt, as well as the personal contributions regarding the Romanian *fiducia*, the *common-law trust*, the Québécoise *fiducia*, and even the French *fiducia*, would a foolhardy scientific approach destined to failure. As a consequence, we have tried to synthesize the main ideas derived from the study of the mentioned legal systems, ideas that would be really useful in analyzing the Romanian *fiducia*. Therefore, aside from these compact sections dedicated to those systems, we will return with arguments derived or borrowed from these systems throughout the thesis.

We've considered useful, probably even out of subjective reasons, the comparative study of the *fiducia* regulation within the Civil Code of both Republic of Moldova and Russian Federation. The reasons for that is the fact that this kind of study hasn't been made before, as well as the fact that within these two legal systems there are regulated two "fiducia" with completely different legal natures comparing to the systems that inspired directly or indirectly the Romanian *fiducia*.

As an important actor and a product of internationalization and of globalization, the trust couldn't be the study subject of supranational legislators. A short section destined to the legislators, again without innovative or original intent, will be able to define an overview over the concept of *fiducia*.

The section dedicated to *fiducia* from other legal systems would be concluded with some considerations regarding the "legal transplant". At the core, the utility of

the section as a whole grants the possibility of conglomerating the ideas and conclusions presented within it. We do believe that there is no need to address the already known fact that *fiducia* in the Civil Code is a legal transplant. As a result, identifying the donor organism, the way of its sampling, the compatibility tests, the transplant itself, the post operating treatment, the medication compatibility – all are extremely relevant for the proposed study.

The following section is dedicated to the extensive analysis of the legal definition. The proximate gender – the notion of “legal operation” is thoroughly analyzed in an attempt to capture all the possible connotations of this notion. We have analyzed the contractual mechanism of the *fiducia* – the only direction imprinted by the legislation within the current regulation. Besides that, we have analyzed the possibility of establishing a *fiducia* through unilateral declarations of intent – unilateral legal acts. In context, we have incited some discussions regarding the “affectation assets” and the transfer between different groups of assets within the same patrimony. Here, as well, we had to face the same problem generated by the legal transplant made in haste without any rigorous analysis regarding the compatibility of the recipient system. Some *de lege ferenda* proposals have been made in order to improve certain aspects qualified by us as being the sore spots of the current regulation.

The uniqueness of the notion has been analyzed in the section that follows. The consisting elements have been analyzed separately: the settlor, the transfer notion, the object of the transfer, the problem of the passive transfer, the trustee, the specific purpose, the autonomous group of assets, and the beneficiary.

In order to see the big picture, the last section addresses the delimitation of *fiducia* from other operations (repurchase, escrow account, stipulation for another, *fideicomis* substitution, foundations, etc.).

The second Chapter is reserved to the analysis of the contract and the effects of *fiducia*.

The first section addresses the analysis of the parties of the fiduciary contract – the settlor and the trustee – followed by the investigation of the beneficiary’s status quo, who despite not being a contract party, plays a fundamental role within its general economic. A critical perspective was provided regarding the regulation of the legal regime of the trustee, due to the fact that it is too restrictive from many points of view. Once again, the legal mechanical mimicry has made its mark on the underdevelopment of this essential element of the *fiducia*. Some *de lege ferenda* proposals have been made due to the fact that the current regulation is one of the inhibitory factors that explain the fact that after two years of the Civil Codes came into force, only 25 fiduciary contracts were signed.

The features of the fiduciary contract are highlighted within the following section. The native polymorphic and the substance of this technique can be easily observed by going through the section.

The background conditions, followed by the constitution conditions fill up the analysis of the fiduciary contract. Some conditions are approached quite critical in an attempt to identify the reasons that determined the Romanian legislator to deviate from the initially selected models.

We have energetically criticized the establishment of an exaggerated formalism (the no exception notary legalized form) – a distinctive mark of the Romanian legislator, taking into account the fact the statistically¹⁷,

¹⁷ Of course, the statistics provided come from a legal environment where this mechanism is used on a large scale and can be used also as a liberality act (in USA). „Aujourd’hui, le *trust* este surtout utilise dans le cadre de relations commerciales (ainsi, plus de 90% de la valeur mise en *trusts* aux Etats-Unis l est

approximately 90% of the assets transferred within fiduciary contract are commercial assets¹⁸. The narrow interest due to professional selective group, misdirected, by ignoring the reality, proves once again the accuracy of the folk wisdom - home count the beats with the fair.

The excessive publicity of the *fiducia*, despite its obvious usefulness, doesn't represent a strong feature of this regulation, as well.

The other two final Chapters could represent, most definitely, the subject of a distinct study not only for a single, but for more doctorate thesis. However, due to the connection to the chosen topic, we considered it appropriate to be treated within the thesis.

The “patrimony of affection” is the chapter within which is synthesized and condensed the discussed throughout the thesis, developing directions that haven't been discussed and fortifying the ones that have already been treated.

The Chapter “administering the property of others” has a significant impact on *fiducia* regulation, representing a sample of a legislative failure through legal transplant. Aside from these *macro* problems, we will highlight some weighty translation and understanding problems of the legal concepts out of their natural legal environment. Some legal review proposals of these contaminated stipulations have been made.

dans de *trusts* a usage commercial, par opposition a des *trusts* a usage personnel, V. J.-H Langbein, *The Secret Life of the Trust: the Trust as an Instrument of Commerce*, (1997) 107 Yale L.J. 165, p.166”, Fr. Barriere, *Fiducie*, Rep.civ.Dalloz, janvier 2008, mise a jour 12/2010, pct. 14.

¹⁸ Even if we are aware that the concept of “commercial” is a powerful irritant for the Romanian legislator, we have used the notion in order to provide as precise as possible the sense of the concept taken into account.

All the chapters are completed with a short conclusion section which represents more of a conclusive observation. In many of the situations it is premature to bring out conclusions due to the lack of jurisprudential solutions and of a solid practice regarding this institution. Despite that, in many of the cases some conclusions were advanced, as well as some *de lege ferenda* proposals.

The conclusions complete the thesis. Far from the intention of the author to represent trenchant conclusions to different issues generated by the current legislation, the actually trigger polemics regarding relevant aspects. The purpose of these polemics is to generate better theoretical and practical solutions. With the risk of being hazardous, we take responsibility for the *de lege ferenda* proposals with the same observations, hoping that their analysis will contribute to the improvement of the legal framework.

Some annexes have been included at the end of this thesis, which we considered useful tools in reading it: the regulations regarding *fiducia* within the French, Quebec, Republic of Moldova and Russian Federation Civil Codes (the last one including a personal translation); the entry notices within the Electronic Archive of Securities Interests of the registered existent *fiducia* until this day.

The section of selective bibliography, consulted and cited, and a table of contents also have been included.

Hoping for mild critics, we invite the reader to turn the first page that covers the first chapter of this work.

BIBLIOGRAFIE CITATĂ ȘI CONSULTATĂ

Cărți:

1. Dossiers pratiques Francis Lefebvre, *La fiducie. Mode d'emploi. Regime juridique, fiscal et comptable. Aspects internationaux*, 2 edition, Edition Francis Lefebvre, 2009. (405 p.) ISBN 978-2-85115-811-6
2. Geraint Thomas, Alastair Hudson, *The law of trusts*, Oxford University Press, New York, 2004. (1906 p.) ISBN 978-0198298946
3. Hayton & Marshall, *Commentary and Cases ok The Law of Trusts and Equitable Remedies*, 12 edition, David Hayton & Charles Mitchell, Sweet & Maxwell, London, 2005. (985 p.) ISBN 9780421901902
4. Association Henri Capitant, *La fiducie dans tous ses Etats*, Journee nationale. Tome XV/ Paris Est Creteil, Dalloz, 2011. (120 p.) 978-2-247-09055-6
5. Maurizio Lupoi, *Trusts. A comparative Study*, Cambridge Studies in International and Comparative Law, Cambridge University Press, 2000. (400 p.) ISBN 9780521623292
6. D.J. Hayton, S.C.J.J. Kortmann, H.L.E. Verhagen, *Principles of European Trust Law*, Kluwer Law International – W.E.J. Tjeenk Willink, 1999.
7. Gianluca Contaldi, *Il Trust nel Diritto internazionale privato italiano*, Milano, Dott.A.Giufre Editore, 2001 (441 p.) ISBN 9788814092510
8. *Trust&Fiducie. Concurrents ou complements?*, Actes du colloque tenu a Paris les 13 et 14 juin 2007, Academy & Finance, Geneve, 2007 (472 p.) 978-2-9700602-0-8-1
9. Robert Pearce, John Stevens, *The Law of Trusts and Equitable Obligations*, fourth edition, Oxford University Press, 2006 (915 p.) ISBN 97801992853558
10. Jan H. Dalhuisen, *Dalhuisen on Transnational and Comparative Commercial, Financial and Trade Law*, third Edition, Hart Publishing, Oxford and Portland, Oregon, 2007.
11. Michael P. Furmston, Cheshire, *Fifoot & Furmston's Law of Contract*, fifteenth Edition, Oxford University Press, 2007.
12. Alastair Hudson, *Equity and Trusts*, sixth Edition, Routledge Cavendish, London and New York, 2010.

13. *Annales Droit des affaires et droit commercial, Methodologie & Sujets corrigés*, sous la direction de Bernard Saintourens, Dalloz, 2009.
14. Septimiu Chelcea, *Cum să redactăm o lucrare de licență, o teză de doctorat, un articol științific în domeniul științelor socioumane*, ediția a IV-a, Editura Comunicare.ro, București, 2010.
15. Umberto Eco, *Cum se face o teză de licență*, Editura Polirom, Iași, 2006.
16. François Martineau, *Petit Traité d'argumentation judiciaire*, 3^e édition, Dalloz, 2008
17. Jean-Marie Denieul, *Petit traité de l'écrit judiciaire*, 7^e édition, Dalloz, 2008
18. Reinhard Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford University Press, Oxford, 1996.
19. *The Oxford Handbook of Comparative Law*, edited by Mathias Reimann and Reinhard Zimmermann, Oxford University Press, Oxford, 2008, Capitolul 13, *Comparative Law as the Study of Transplants and Receptions*, de Michaele Graziadei, p. 442.
20. Ovidiu Ungureanu, Cornelia Munteanu, *Tratat de drept civil. Bunurile. Drepturile reale principale*, Ed. Hamangiu, București, 2008.
21. Lionel Smith (editor), *The Worlds of the Trust*, Cambridge University Press, 2013.
22. Philippe Malaurie, Laurent Aynes, Philippe Stoffel-Munck, *Drept civil. Obligațiile* (traducere de Diana Dănișor după ediția a 3-a, a Philippe Malaurie, Laurent Aynes, Philippe Stoffel-Munck, *Droit civil: Les Obligations*, Defrenois, Paris, 2007), Editura Wolters Kluwer România, București, 2009.
23. Valeriu Stoica, *Drept civil. Drepturile reale principale*, vol. 1, ed. Humanitas, București, 2004.
24. Richard Helmholz, Reinhard Zimmermann, *Itinera Fiducia. Trust and Treuhand in Historical Perspective*, Editura Dunker & Humblot, Berlin, 1998.
25. Liviu Pop, Ionuț Florin Popa, Stelian Ioan Vidu, *Tratat elementar de drept civil. Obligațiile conform noului Cod civil*, Editura Universul Juridic, București, 2012.
26. *Black's Law Dictionary*, Eighth Edition, Bryan A. Garner, editor in chief, Thomson West, St. Paul, 2004.

27. Vladimir Hanga, *Drept privat roman*, Editura Cordial, Cluj-Napoca, 1995.
28. Juanita Goicovici, *Formarea progresivă a contractului*, Editura Wolters Kluwer, București, 2008.
29. Lucian Săuleanu, *Societăți comerciale. Studii*, Editura Universul Juridic, București, 2012.
30. Ioan Lazăr, *Dreptul finanțelor publice. Vol. 1. Drept bugetar*, Editura Universul Juridic, București, 2013.
31. *Armonizarea legislativă europeană în domeniul răspunderii persoanei juridice. Comunicări susținute la International Summer School Lapusna*, 2009, Editura Sfera Juridică, Cluj-Napoca, 2009.
32. Radu N. Catană, *Dreptul societăților comerciale. Probleme actuale privind societățile pe acțiuni. Democrația acționarială*, Editura Sfera Juridică, Cluj-Napoca, 2007.
33. Radu N. Catană, *Dreptul asigurărilor. Reglementarea activității de asigurare. Teoria generală a contractului de asigurare*, Editura Sfera Juridică, Cluj-Napoca, 2007.
34. Paul Vasilescu, *Drept civil. Obligațiile*, Editura Hamangiu, București, 2012.
35. Ion Turcu, Liviu Pop, *Contractele comerciale*, vol. I și II, Ed. Lumina Lex, București, 1997.
36. Ion Turcu, *Vânzarea în Noul Cod civil*, Ed. C.H. Beck, București, 2011.
37. Ion Turcu, *Tratat teoretic și practic de drept comercial*, Vol. IV, Ed. C.H. Beck, București, 2009.
38. Ion Turcu, *Teoria și practica dreptului comercial român*, Vol. I, II, Ed. Lumina Lex, București, 1998.
39. Ion Turcu, *Operațiuni și contracte bancare. Tratat de drept bancar*, vol. I și II, Ed. Lumina Lex, București, 2004.
40. Ion Turcu, *Operațiuni și contracte bancare*, Ed. Lumina Lex, București, 1997.
41. Ion Turcu, Mădălina Botină, *Dreptul afacerilor întreprinderii*, vol. 1, Editura C.H. Beck, București, 2013.
42. Dan Drosu Șaguna, Monica Amalia Rațiu, *Drept bancar*, Ed. C.H. Beck, București, 2007.
43. Lucian Săuleanu, Lavinia Smarandache, Alina Dodocioiu, *Drept bancar*, Ed. Universul Juridic, București, 2009.

44. Gheorghe Piperea, *Drept comercial*, vol. I, Ed. C.H. Beck, București, 2008
45. Gheorghe Piperea, *Drept comercial*, vol. II, Ed. C.H. Beck, București, 2009
46. Gheorghe Piperea, *Introducere în dreptul contractelor profesionale*, Ed. C.H. Beck, București, 2011
47. Angela Miff, Ciprian Păun, Alina Oprea, *Dreptul afacerilor*, ed. a 2-a, revizuită și adăugită, Ed. Risoprint, Cluj-Napoca, 2009
48. Dragoș-Mihail Mănescu, *Regimul juridic al societăților bancare*, Ed. Hamangiu, București, 2009
49. Vasile Luha, *Titluri de credit. Cambia*, Ed. Lumina Lex, București, 1998
50. I. L. Georgescu, *Drept comercial român*, vol. I, Ed. All Beck, București, 2002
51. Alexandru-Mihnea Găină, *Drept fiscal și procedură fiscală*, Ed. Universul Juridic, București, 2009
52. Eugenia Florescu, *Regimul juridic al titlurilor de credit și al valorilor mobiliare*, Ed. Rosetti, București, 2005
53. Aida Diana Dumitrescu, *Titlurile de valoare: reglementare, doctrină, jurisprudență*, Ed. C.H. Beck, București, 2011
54. Radu Diaconu, *Instituții financiare nebancale*, Ed. C.H. Beck, București, 2011
55. Ion Deleanu, *Părțile și terții. Relativitatea și opozabilitatea efectelor juridice*, Ed. Rosetti, București, 2002
56. Ion Deleanu, *Ficțiunile juridice*, Ed. All Beck, București, 2005
57. Stanciu D. Cărpenaru, *Drept comercial român*, Ediția a VI-a, Ed. Universul Juridic, București, 2007
58. Motica Radu, Bercea Lucian, *Drept comercial român și drept bancar*, vol. II, Ed. Lumina Lex, București, 2001
59. Dragoș-Mihail Mănescu, *Regimul juridic al societăților bancare*, Editura Hamangiu, București, 2009.
60. *In honorem Corneliu Bîrsan*, Editura Hamangiu, Revista Dreptul, București, 2013.
61. Vladimir Hanga, Mircea Dan Bob, *Curs de drept privat român*, ediția a IV-a, revăzută și adăugită, Editura Universul Juridic, București, 2011.

62. I.N. Fiñescu, *Drept comercial*, vol. II, Editat de Al. Th. Doicescu Licențiat în Drept, București, 1929.
63. Dan Chirică, *Tratat de drept civil. Contracte speciale. Volumul I. Vânzarea și schimbul*, Editura C.H. Beck, București, 2008.
64. Liviu Pop, *Tratat de drept civil. Obligațiile. Volum II. Contractul*, Editura Universul Juridic, București, 2009.
65. Irina Sferdian, *Dreptul asigurărilor*, Editura C.H. Beck, București, 2007.

Articole, Studii:

1. David Hayton, *Trusturile în dreptul internațional privat european*, în *Revista de Drept Internațional Privat și Drept Privat Comparat*, Editura Sfera Juridică, Cluj-Napoca, 2006, p.
2. Al. Berda, *Fiducia*, în *Specificitate și complementaritate în dreptul privat european. Conflictele de legi și jurisdicții și integrarea juridică europeană*, coord. Dan Andrei Popescu, Editura Hamangiu, București, 2012, p. 438-518.
3. Mădălin-Irinel Niculeasa, *Regimul fiscal al fiduciei*, *Revista Română de Drept Privat*, nr. 5/2012, p. 66-89.
4. Valeriu Stoica, *Patrimoniul de afecțiune – continuitate și reformă*, *RRDP*, nr. 2/2013, p. 13-22.
5. Dan Chirică, *Fiducia în noul Cod civil*, în *Noile Coduri ale României, Studii și cercetări juridice*, editura Universul Juridic, București, 2011, p. 185-208.
6. Lavinia Tec, *Aplicații ale fiduciei în dreptul afacerilor în lumina noului Cod civil*, în *Noile Coduri ale României, Studii și cercetări juridice*, editura Universul Juridic, București, 2011, p. 208-223.
7. Codrin Macovei, *Reglementarea liberalităților fideicomisare și reziduale în noul Cod civil*, în *Noile Coduri ale României, Studii și cercetări juridice*, editura Universul Juridic, București, 2011, p. 223-235.

8. Cătălin R. Tripon, *Fiducia, rezultat al interferenței celor 2 mari sisteme de drept*, în RRDP, nr. 2/2010, pp. 187-192.
9. Ioan Popa, *Contractul de fiducie reglementat de noul Cod civil*, în RRDP, nr. 2/2011, pp. 213-252.
10. Safta Alexandra Cosmina, Buliga Mirela Violeta, *Considerații privind regimul juridic și fiscal al fiduciei*, în RRDP, nr. 4/2012, pp. 112-121.
11. Adrian Tamba, *Despre anticreza sau gajul imobiliar*, SUBB *Jurisprudentiala*, nr. 1/2012 (<http://www.studia.ubbcluj.ro/download/pdf/698.pdf>)
12. Olivier Moréteau, *An Introduction to Contamination*, Journal of Civil Law Studies, vol. 3, 1-1-2010, disponibil la <http://digitalcommons.law.lsu.edu/jcls/vol3/iss1/3/> (01.12.2013)
13. Michele Graziadei, *Legal Transplants and the Frontiers of Legal Knowledge*, Theoretical Inquiries in Law [Vol. 10:693], p. 693, disponibil la <http://www.iuctorino.it/sites/default/files/docs/Professor%20Graziadei%20-%20Legal%20Transplants.pdf> (01.12.2013)
14. Holger Spamann, *Contemporary Legal Transplants - Legal Families and the Diffusion of (Corporate) Law*, Discussion Paper No. 28, 4/2009, Harvard John M. Olin Center for Law, Economics, and Business Fellows' Discussion Paper Series, disponibil la http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Spamann_28.pdf (01.12.2013).
15. Michele Graziadei, *Legal Culture and Legal Transplants*, Reports to the XVIIIth International Congress of Comparative Law, Washington, D.C. 2010, „Legal culture and legal transplants” prepared by the Isaidat Law Review for the Società Italiana di Ricerca nel Diritto Comparato (SIRD), (2011) Volume 1 –Special Issue 1, Article 16 disponibil la

<http://isaidat.di.unito.it/index.php/isaidat/article/viewFile/46/53>
(01.12.2013).

16. Philip M. Nichols, *The Viability of Transplanted Law: Kazakhstani Reception of a Transplanted Foreign Investment Code*, disponibil la [https://www.law.upenn.edu/journals/jil/articles/volume18/issue4/Nichols18U.Pa.J.Int'lEcon.L.1235\(1997\).pdf](https://www.law.upenn.edu/journals/jil/articles/volume18/issue4/Nichols18U.Pa.J.Int'lEcon.L.1235(1997).pdf) (01.12.2013)
17. Interviu cu prof. univ. dr. Valeriu Stoica, realizat de Alina Crăciun, coordonator reviste Wolters Kluwer România, publicat în revista Pandectele Române nr. 11/2013. <http://www.wolterskluwer.ro/info/articole/despre-noul-cod-civil-ordinea-intemeiata-pe-libertate-si-frumusetea-valorilor/> (18.12.2013)
18. Radu Rizoiu, *Mandatul irevocabil ca tehnică de garantare a obligațiilor*, în RRD, nr. 4/2009, p. 180.
19. Anne-Valérie Le Fur, *L'acte d'exploitation dela chose d'autrui*, RTDCiv.2004, p.429
20. Alain Sériaux, *La notion juridique de patrimoine. Brèves notations civilistes sur le verbe avoir*, RTDCiv.1994, p. 801.
21. Bujorel Florea, *Unele observații asupra contractului de fiducie astfel cum este reglementat în noul Cod civil*, Revista „Dreptul”, nr. 7/2013, p. 60-82.
22. Mihnea-Dan Radu, *Fiducia: From Fides to Trust and the New Civil Cod Regulation, Valahia University. Law Study*, nr. 2/2012, p. 238-246 (disponibil online <http://www.analefsj.ro/ro/reviste/numarul20/nr20.pdf>)
23. Vasile Nemeș, *Contractul de fiducie conform Noului Cod civil*, în „Curierul judiciar” nr. 10/2011, p. 518-525.
24. Hunor Burian, *Fiducia în lumina Noului Cod civil*, în „Revista Româno-Maghiară de Științe Juridice”, nr. 1/2011, p. 30-48 (www.jog.sapientia.ro)
25. N. Diaconu, *Legea aplicabilă fiduciei cu element străin în lumina Codului civil*, în „Dreptul” nr. 9/2012, p. 87

26. Florin Marius Tacu, *Aspecte privind reglementarea fiduciară în noul Cod civil*, în volumul „*Perspectivile dreptului românesc în Europa Tratatului de la Lisabona*”, Editura Hamangiu, București, 2010, p. 183 și urm.
27. Atanasiu, Ana Gabriela, „*Fiducia*”, Revista Romană de Drept al Afacerilor, nr. 4/2011 p.
28. Mirela Iovu, „*Fiducia – o instituție juridică milenară, dar modernă prin aplicabilitatea sa și în secolul XXI*”, Caietele Juridice ale BNR, nr. 1/2012, pp. 56-62.
29. Brândușa Ștefănescu, „*Instituția fiduciei reglementată de Codul civil și consecințele asupra legislației bancare*”, Caietele Juridice ale BNR, nr. 1/2012, pp. 16-20.
30. Bouteille Magali, *La fiducie. Un potentiel inexploité*, disponibil online la <http://cnriut09.univ-lille1.fr/articles/Articles/Fulltext/75a.pdf>
31. R.Constantinovici, *Equity și Trust*, în revista „Dreptul”, nr. 1/2004, p. 206
32. Mihai David, *Experimentul european al fiduciei – realități și perspective* - , în *Drept și drepturi – tradiție și modernitate. In honorem Ion Deleanu*, Editura Universul Juridic, București, 2013, p.107-126.
33. Liviu Marius Harosa, *Fiducia, o remodelare a dreptului de proprietate*, în *Liber amicorum Liviu Pop*, Editura Hamangiu, 2014, în curs de apariție.
34. Liviu Marius Harosa, *Scurte considerații asupra fiduciei în reglementarea noului Cod civil*, în *RRDA*, nr. 9/2013, disponibil la <http://idrept.ro/DocumentView.aspx?DocumentId=11013182>
35. Ion Turcu, *Se poartă Fiducia*, articol online, disponibil la <http://www.juridice.ro/244256/se-poarta-fiducia.html> (publicat în 19.02.2013).

36. R.M. Popescu, E. Oprina, *Fiducia și implicațiile acesteia asupra executării silite*, în RRES, nr. 4/2011, p. 67-85.
37. A. Rățoi, *Fiducia*, în *Noul Cod civil. Note. Corelații. Explicații*, Editura C.H. Beck, București, 2011, p. 269-276.
38. Gheorghe Buta, *Fiducia*, în *Noul Cod civil. Studii și comentarii*, coordonator Marilena Uliescu, vol. II, Editura Universul Juridic, București, 2013, p.321-350.
39. Gheorghe Buta, *Administrarea bunurilor altuia*, în *Noul Cod civil. Studii și comentarii*, coordonator Marilena Uliescu, vol. II, Editura Universul Juridic, București, 2013, p. 350-385.
40. M. Afrăsinei, M-L Belu-Magdo, A. Bleoancă, ..., *Noul Cod civil. Comentarii, doctrină și jurisprudență*, vol. 1, art. 1 -952, Editura Hamangiu, București, 2012.
41. Rodica Constantinovici, *Comentariu art. 773*, p. 823, în Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coordonatori), *Noul Cod civil. Comentariu pe articole. Art. 1-2664*, Editura C.H.Beck, București, 2012.
42. Ionut Popa, *Cesiunea de contract în reglementarea noului Cod civil*, în RRDA, nr.
43. Cornel Popa, *Configurația preluării de datorie în noul Cod civil*, în RRDA, nr.
44. Rene Demogue, *Des modification au contrat par volonte unilateral*, RTDCiv, 1907. p. 245.
45. Marquis de Vareilles-Sommières, *La définition et la notion juridique de propriété*, RTDCiv., 1905, p. 497.
46. A. Duțu-Buzura, *From World Heritage to Environmental Patrimony*, AGORA International Journal of Juridical Sciences, No. 4 (2013), pp. 42-48, disponibil la <http://univagora.ro/jour/index.php/aijjs/article/viewFile/825/173ro>
47. Antoine Bureau, *Le contrat de fiducie : étude de droit comparé Allemagne, France, Luxembourg*, disponibil la

http://www.juripole.fr/memoires/compare/Antoine_Bureau/partie2.html

48. Philippe Hoss, Patrick Santer, *Le contrat fiduciaire en droit luxembourgeois*, disponibil la <http://www.ehp.lu/uploads/media/Contratfiduciairedroitluxembourgeois.pdf>
49. *Proposition de loi instituant la fiducie, Examen des articles*, disponibil la <http://www.senat.fr/rap/106-011/106-0119.html>
50. Michel Grimaldi, *L'introduction de la fiducie en droit français*, disponibil la <http://henricapitantlawreview.net/article.php?id=309>
51. Laurent Aynes, *Les opérations fiduciaires* (Colloque de Luxembourg). In: *Revue internationale de droit comparé*. Vol. 38 N 4. Octobre-décembre. pp. 1241-1242, disponibil la: http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1986_num_38_4_2586
52. Sabine Danino Sultan, *La convention de portage*, disponibil la http://www.glose.org/Art_portage.htm#_ftn4
53. Thomas Naudin, *La théorie du patrimoine à l'épreuve de la fiducie*, disponibil la http://www.memoireonline.com/11/07/707/m_la-theorie-du-patrimoine-a-l-epreuve-de-la-fiducie0.html
54. Thomas Amico, *Les conventions de portage*, disponibil la <http://www.tomamico.com/wp-content/uploads/2006/05/Les%20conventions%20de%20portage.pdf>
55. Dan Chirică, *Noul Cod civil - direcții de evoluție*, Interviu publicat în revista *Pandectele Române* cu numărul 4/2013, disponibil la <http://idrept.ro/DocumentView.aspx?DocumentId=11012583>
56. Emil Molcuț, *Rolul formalismului în evoluția dreptului*, în *In honorem Corneliu Bîrsan*, Editura Hamangiu, Revista Dreptul, București, 2013, p. 901-906.

57. Dan Oancea, *Elementele esențiale ale contractelor în dreptul roman*, în *In honorem Corneliu Bîrsan*, Editura Hamangiu, Revista Dreptul, București, 2013, p. 907-914.
58. Ivan P. Mangatchev, *Fiducia Cum Creditore Contracta in EU Law*, în Social Science Research Network, disponibil la http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1474199