Babeş-Bolyai University

Faculty of Law

DOCTORAL THESIS

Directors' fiduciary duties in comparative corporate law (Summary)

PhD coordinator

Prof. Dr. Radu N. Catană

PhD candidate

Adina Ponta

Cluj-Napoca

2019

I. Content of the PhD thesis

Keywords: duty of care, duty of loyalty, good faith, standard of review, business judgment rule, corporate opportunity doctrine, civil liability, excluding or limiting liability

II. General aspects of the research project

1. Actuality and potentiality of the subject

This thesis aims at a comparative examination of directors' fiduciary duties in the 21st century corporate governance, by analyzing their evolution in common law and in the civil law system[1]. The research topic was determined by recognition and regulation of fiduciary duties in Romanian corporate law, as these duties experienced limited national literature and jurisprudence at the beginning of this research.

The novelty of the thesis lies in the assessment of symmetry or convergence of the institutions we studied in different legal systems, mainly in terms of characters, practical effects and applicative jurisprudence of the business judgment rule. The opportune character of the paper is given by our efforts to capture the modernization tendency of Romanian corporate law and to pragmatically approach the contractual asymmetry of the fiduciary relationship. The outline of fiduciary duties is based on a study, which we hope to be exhaustive, regarding Romanian jurisprudence on the application of the business judgment rule in corporate law until December 2018.

2. Research methodology

The methodology we used included a comparative examination of regulations, soft law instruments, literature and jurisprudence on fiduciary duties in several relevant jurisdictions in this field, USA, UK, France, Germany and Romania, and in some states with a similar legal tradition to Romanian law. Through a collection of case law examples, the paper seeks to provide a picture of trends in legislative policies, court practice and the dynamics of the business world, by assessing the main legislative intervention strategies.

The research tools we used are not limited to European literature and jurisprudence, but they also include primary and secondary legislation, as well as soft law instruments from EU jurisdictions, US and Quebec. Using the critical-comparative method, we analyzed studies and statistics on European corporate governance from French and common law perspectives and reports by European institutions and recognized think-tanks. Using the logical method, we synthesized French, German and Romanian academic opinions, by using sources such as coursebooks and legal commentaries, but especially legal journals to capture the most current issues. The study includes an in-depth analysis of the legal literature on the business judgment rule and concentrates disparate academic and jurisprudential approaches in order to propose a fair interpretation of the rule in Romanian law. Applying the deductive method, we followed

[1] The term "director" is also used when we refer to members of the directorate of companies using the two-tire board system. If certain rules only apply to members of the board in the one-tier system or of the directorate, we will expressly mention this.

national jurisprudential trends to address modern legal institutions according to their sources of law and history.

III. Content of the doctoral thesis

1. Structure of the doctoral thesis

The thesis is structured in seven chapters. The **first chapter** provides an introduction in the theory of fiduciary duties, displaying the fundamentals and rationales of fiduciary duties in parallel with the development of the term "fairness". Despite different legal traditions, fiduciary duties show similar architecture in common law and in the civil law system, taking in both systems the role of a mechanism for facilitating trust-based relationships and for encouraging members of the society to act in a correct, moral and honest manner. Following the etymological and historical analysis of relevant terms, we analyzed the practical effects of deriving fiduciary duties from property rights in common law and from the law of contracts in the civil law system. Finding that in both systems the function of these duties is to offer legal auspices to the notion "trust", we compared the objectives of regulations in both legal traditions. For a comprehensive introduction into the subject matter, the first chapter also describes the basis for differentiating between standards of conduct and standards of review.

The next three chapters cross-examine fiduciary duties, i.e. the standards of conduct applicable to corporate directors, and their role in guiding fiduciary conduct through expansive constructions in response to the continuous tension caused by the conflict of interest between those holding capital and those holding the controlling power of a company. **Chapter II** screens the duty of care by describing its objective and subjective elements and by examining its four subsidiary duties under the case-law of origin. The first component includes directors' duty to reasonably monitor the progress of the business and to take appropriate action to obtain relevant information following this oversight. The second component is the duty to research and to formulate appropriate questions, namely the duty to track and develop data which indicates imminence or probability of risks. The last two components relate to the use of obtained information and to the duty to establish an appropriate decision-making process for adoption of reasonable business decisions.

After addressing the traditional content of this duty in French literature and common law jurisprudence, we proposed a comparative view of legal provisions in EU member states to determine the scope of this duty in modern competitive economies. The characters and the breach of this duty under Romanian law are discussed by examining the literature and jurisprudence that inspired the legislator. By creating parallels between the characters of the agency (mandate) contract and directors' legal prerogatives, the study reveals the importance of fiduciary characters of a company representative. Following the analysis of the apparent agent authority and of exceeding powers, we presented differences between the standard of review of LLC directors and of stock company directors, following the successive modifications of special legislation. The second part of the chapter seeks to identify the nature, regime and effects of business judgment rule, as an objective standard of review or as an abstention doctrine. Following the effects of the business judgment rule and jurisprudential interpretations in common law and civil law, we assessed the compatibility of Romanian provisions with established interpretations in foreign doctrine.

In civil law countries, the duty of care is mostly regulated fragmentary and often derived from general law provisions. The study on jurisprudential evolution reveals the actuality of the latent conflict between applicability of the duty of care and the duty of loyalty, the appellants being interested in proving violation of more than one fiduciary duty through the same directorial misconduct. At the same time, defendants invoke loyal and good faith conduct in order to narrow the scope of loyalty and to expand the meaning of diligence and prudence to benefit from the effects attached to this fiduciary duty, such as the business judgment rule or limitation of liability clauses. The involved risk is including a large number of subsidiary duties of diligence and prudence in the category of loyalty, under the pretext that there cannot be a truly loyal behavior without complying with the duty of care. In our opinion, courts should draw a clear line between the scope of the two fiduciary duties, without losing sight of the business judgment rule. The justification of loyalty in contemporary corporate law and assimilation of social and moral influences will lead to the full appreciation of this duty.

Chapter III examines the outline of the duty of loyalty, which we regard as the core of corporate directors' fiduciary duties. The objective of this chapter was to highlight the pattern of this duty in the evolutionary jurisprudence, from the beginning of confluence of legal and microeconomic elements, with the present social and moral nuances. Various case law examples enabled identification of overlaps between loyalty and good faith, as well as congruencies of the duty of care and the duty of loyalty.

The comparative law analysis revealed the divergence of court judgments depending on the approach of this duty. While in common law, the duty of loyalty absorbs good faith, civil law doctrine regards loyalty as one of the main elements of good faith. We proposed a comparative analysis of the fiduciary duty of loyalty in European jurisdictions, examining Romanian rules and the jurisprudential recognition of this institution. The fiduciary function is expressed by sincere efforts to exert these duties by using knowledge and experience, therefore EU member states propose widening directors' functions with initiatives appropriate to the economic environment. Reviewing the social changes that changed the path of doctrinal and jurisprudential interpretations of the duty of loyalty - from the classical conflict of interest to positive duties, we identified the inherent elements of the agency contract in Romanian private law, reflecting upon the expansion of loyalty by addressing the corporate opportunity doctrine.

The majority of authors emphasize the grounds of the duty of loyalty, i.e. that directors obtain financial benefits, as this duty mainly implies avoiding transactions in conflict of interest. We demonstrated that equivalating conflicts of interest to a violation of the duty of loyalty is a narrow view, for the reason that an act of trust betrayal would be the sole difference between a breach of the duty of loyalty and the duty of care. This view expresses indeed the minimum requirement of loyalty, but improperly suggests that this duty would only be expected in the case of material temptations. We welcome the current trend of common law jurisprudence to extend loyalty breaches to cases in which directors fail to demonstrate an affirmative devotion to the beneficiary's well-being.

Although differences between fiduciary duties in common law and civil law are not essential but derive from their different sources of law, we found that both systems borrowed principles and elements from other fields of law for developing fiduciary duties in corporate governance. The main difference are the primary beneficiaries of fiduciary duties, while in common law, shareholders are the main beneficiaries, in the civil law system, fiduciary duties are generally owed to the managed company, whose interests must always prevail. Given the openness of both systems towards absorbing compatible influences from other jurisdictions, the different nature of legal systems has lost practical importance in substantive law matters.

While regulations and jurisprudential formulations of the standard of care are largely homogeneous within the EU, conflict of interest approaches are highly diverse. One possible explanation is that, in the process of absorbing common law instruments, fiduciary duties were built on distinct fundamentals of private law, such as the agency contract or other legal constructions that already incorporated notions such as trust and loyalty. Due to its heterogeneity, the duty of loyalty is not addressed in all jurisdictions by specific rules that exhaustively list the circumstances in which it can be breached, but jurisprudence customized its expressions from common language. Loyalty remains a social and moral norm and a legal standard that cannot be reduced to a single rule. In most European countries, the duty of loyalty is an objective standard of conduct that covers all situations involving a conflict between stakeholders, unlike good faith, which has strong subjective implications.

The regulatory architecture mainly follows the board structures found in EU countries, the one-tier and two-tier system. The comparative study on corporate governance concluded that sometimes, mere reallocation of decision-making power to a supervisory body for assessing transactions between a company and a member of the board, may replace formal regulation of conflicts of interest. We observe that in general, a broad definition of conflict of interest offers more flexibility and transparency. Given that the presumption of good faith is easily overturned but hard to be upheld by directors, and the business judgment rule is not applicable in cases of breach of duty of loyalty, the two-tier system ensures the clearest protection of transactions closed by a director and susceptible to conflicts of interest.

The effectiveness of formal regulation of corporate opportunities depends primarily on identifying the purpose of directors who exploit an opportunity and on the conditions for using an opportunity belonging to the company, i.e. *ex ante* approval by an independent body. Secondly, identification of the real and current nature of an opportunity is an important dimension for establishing directors' behavior. By studying early French jurisprudence on the corporate opportunity doctrine, we note the importance of adapting this doctrine to the legislative context and to procedural rules in other legal systems. Otherwise, jurisprudence will resist legal imports which are too different from fundamental private law institutions. The

European trend is to narrow the notion of competition to scenarios in the same field of activity as the one of managed companies. We note that in absence of regulating the corporate opportunity doctrine or the duty not to compete with the company, the elasticity of laws proves to be sufficient even in cases where jurisprudence is not rich enough.

Chapter IV addressed good faith from a corporate law perspective, starting from the American case-law tendency to explicitly recognize good faith as a distinct fiduciary duty after 1995. In our efforts to outline this duty and set it apart from the other two traditional fiduciary duties, we studied good faith interpretations in corporate governance. Due to its amplitude, good faith allowed the judiciary to articulate subsidiary fiduciary duties that address social changes.

The analysis of civil law literature reveals that, unlike contract law, where practitioners prefer to define good faith by excluding scenarios from its vast scope, in corporate governance, including a conduct or a business decision in the scope of good faith is more technical.

In essence, *bona fide* in corporate law can be described by two concepts, the baseline conception of this institution and duties that form and even define this notion. Following the analysis of the baseline conception, in our view, good faith should be regarded and regulated as a distinct fiduciary duty, an institution that absorbs loyalty. First of all, we revealed a number of situations where inappropriate conduct exceeds the scope of traditional classical fiduciary duties. Secondly, rules for limiting traditional duties prove to be inapplicable in situations governed by good faith. A director will not be liable for a duty of care breach, even if he acts negligently, because his conduct will be protected by the business judgment rule, by the gross negligence standard or covered by liability limitation clauses. In respect of the duty of loyalty, conflicts of interest may circumvent effective judicial review if they were approved by independent directors. Thirdly, good faith acts are the basic principle for articulating new specific fiduciary duties. We mention in this respect the principle that directors are obliged not to knowingly cause a situation in which the company violates the law even if, following a rational judgment, the foreseeable consequence of the violation is maximization of shareholders' wealth and corporate profits.

Another relevant feature of good faith in the context of the justifying its independent character as fiduciary duty, is its supplementary and protective function. While in most contracts the duty of loyalty is only accessory to the main obligations, in fiduciary relationships, loyalty is the main duty owed. Numerous European states codified the two traditional fiduciary obligations, the duty of loyalty being generally absorbed by good faith. Attempts to rationalize good faith in continental law have often materialized through various formulations that exclude inappropriate conduct.

Overall, French law keeps the subjective good faith approach by eliminating bad faith situations and the dominant feature of good faith in contractual matters is its interpretative function. German law regards the duty of loyalty as a stricter version of good faith, while the American jurisprudential approach to contractual good faith implies referring this concept to the perception of a target group in the industry in which the dispute arises. The main difference that prevents convergence of the duty of loyalty is that, in common law jurisprudence it embodies good faith, while in continental law, loyalty is an essential component of good faith.

By developing the Entire fairness test, the concept of trust, as the center of fiduciary relationships, is replaced by fairness, which can be reduced to a set of procedural rules. **Chapter V** focused on the comparative analysis of standards of review created by common law jurisprudence and on outlining what is currently understood in legal literature as the Entire fairness test and the business judgment rule. If appellants succeed in proving a *prima facie* case that directors breached their fiduciary duties, i.e. lack of independence, conflict of interest or reasonable suspicion of exceeding powers, the business judgment rule cannot be applied and courts resort to one of the other standards: Enhanced business judgment rule, Entire fairness test or one of the standards generated by the three famous cases that created them: *Revlon, Blasius* and *Schnell*. We ascertained that good faith operates as a connector of standards of review. Being an indispensable prerequisite for fulfilling each fiduciary duty, numerous authors regard the two traditional fiduciary duties as representations of good faith.

Case-law study revealed certain criteria that limit liability or change the standard of review. Minority shareholders' votes are a sign of fairness of the decision or contribute to lowering the standard of review. Similarly, independent directors' votes diminish suspicions of conflict of interest. The practicality of these criteria is evidenced by the fact that case law calibrated the manner in which the judiciary corroborates contextual elements with objective investigation of external conditions.

The unique nature of the business judgment rule as standard of review in common law is revealed by its dual value, as a presumption in favor of directors and as protection of the substance of decisions. EU member states approach the rule as a standard of review associated to the standard of care. Therefore, in general, its main function is to create a less demanding standard of review than the ideal standard of conduct created by the comprehensive definition of diligence and prudence.

Civil law jurisprudence reveals lack of precise delimitation between standards of conduct and standards of review. We observed a similar assessment of fiduciaries' behavior among EU jurisdictions, comparable criteria, but standards of review are not classified by the existence of conflicts of interest, but by their strictness. The vast majority of states apply the mixed standard or the objective standard of review. For determining the burden of proof, the relevant criterion is if the business judgment rule is codified or jurisprudentially applied. Review of the duty of oversight and of accountability after delegation are among the most varied standards and court judgments are generally unpredictable. The business judgment rule is the only standard that prevents judicial assessment of the business decision, while the other standards determine analysis of different depths. In absence of clear standards of conduct and of flexible standards of review, directors will be deprived of their legal protection and shareholders will feel the strong tension of the imbalance between authority and power. Thus, they are likely to opt for revoking directors, a solution which dismantles the value and effect of the entire theory of fiduciary duties.

The presentation of fiduciary duties and standards of review in Romanian law in **chapters II-V** is based on a study on Romanian applicatory jurisprudence of the business judgment rule. We note that the legal wording includes the subsidiary duties of the duty of care exposed in the comparative law analysis, as well as the distinction between the reasonable and rational character of a business decision. We ascertained that courts first apply the objective criterion when assessing breaches, complemented by relevant elements directly related to the circumstances of the business decision. In order to prevent personal liability for *culpa levissima*, the judiciary should place greater importance to predictability of the effects of management acts, as a criterion for liability for breaching the duty of care. We noticed careful judicial analysis of the causal relationship and verification of existence of a quantifiable prejudice in order to establish a breach of the duty of care, which explains the lack of jurisprudence on compensation for the company's unrealized gain due to inappropriate conduct.

First of all, the codification of the business judgment rule emphasizes the nature of agents' duty to employ his skills on a best effort basis and encourages prudent business risk. Secondly, it clarifies that in absence of serious fault, directors will not be personally liable, neither if they manage an LLC, nor in the case of stock companies, by including the rule in Chapter IV of the Company Law. We anticipate a stable culture of directors' accountability and shareholders' awareness, as shareholders are usually tempted to turn to the leverage of revoking directors for mismanagement instead of performing contextual and circumstantial analysis of their decision and strategies.

Regarding the current application of the business judgment rule in Romanian jurisprudence, we noticed two aspects. Firstly, in absence of contrary legal provisions, the burden of *prima facie* evidence will lie with the plaintiff, like in any civil litigation. Secondly, unlike the original Delaware formulation, the business judgment rule does not establish a presumption of directors' diligence and prudence. On the contrary, according to the current trend, the level of diligence of a *bonus pater familias* is applied more rigorously to professional managers, exigencies are increased and the director's fault is presumed in the case of contractual liability. As an obligation of efforts, breach of the duty of care must be proven in all cases. If the appellant makes this proof, the burden of proof should shift and directors be required to prove the diligence and reasonable character of the business decision. We justified the jurisprudential application of the mechanism of shifting the burden of proof by substantive and procedural arguments.

Under Romanian law, the duty of loyalty is unequivocally absorbed by good faith, which is presumed by law, but fulfillment or breach of the duty of care, which also includes good faith elements, shall be proven. Considering the leverage that the lawmaker provided in the regulation of good faith, namely presumption of its fulfillment by the fiduciary, we proposed extending this presumption to the duty of care, and, as a consequence, establishing this presumption as an effect of the business judgment rule. Jurisprudence would thus confer the rule its primary effect and goodwill directors would benefit from the advantages offered by the case-law of origin. Once the presumption of diligence is overturned, the burden of proof will shift as well.

We consider, however, that the deprivation of the business judgment rule of one of its effects does not constitute an invalidation of it, nor does it prove the futility of the institution in Romanian law. By effect of applying the legal provision and verifying the conditions of the rule, a bona fide director may not be obliged to repair the damage caused to the company, and this will be borne by the company on whose behalf the business decision was made. The consequences of management mistakes will ultimately be borne by the shareholders who took the business risk and gave up their power.

Romanian literature traditionally includes the duty of loyalty, along with honesty, fidelity and fairness in the content of good faith. We thus questioned why the lawmaker did not opt for regulating the duty of care and good faith as core fiduciary duties, as loyalty is traditionally included in good faith. Regarding the structure, Romanian legislature preferred the American model of classical fiduciary duties, the duty of care and the duty of loyalty. Unlike common law, where good faith is absorbed by the vast notion of loyalty, the continental law approach is opposite, i.e. loyalty is included in good faith and not the other way, which justifies the existence of the two classic fiduciary obligations in common law.

Chapter VI captures the particularities of fiduciary duties in specific contexts. Firstly, we covered the evolution of the non-executive function by evaluating legislative approaches chosen by EU member states. By nature of their function, non-executive directors control the risks determined by information imbalances between the holders of capital and those controlling a company, provided that they properly fulfill the duty of oversight. The duty to build a business strategy, the duty of oversight and the duty to process the information identified as result of continuous supervision, are of nature (not of essence) of the non-executive function. Romania is one of the few European jurisdictions that do not include the duty of supervision of executive directors among non-executive directors' duties. Most states determine non-executive behavior standards based on their functional responsibilities and their role on the board, but a uniform mechanism for interpreting the applicable standard of care remains a challenge in practice.

Secondly, we highlighted particularities of mergers and acquisitions, both from the perspective of management of the acquiring company and of the selling company. In this niche we observed a high level of harmonization among EU member states' laws and noticeable common law influences. Therefore, we studied *ex-ante* and *ex post* approaches of management duties and legal artifices created by practitioners. In our opinion, the role of the board in the context of mergers and acquisitions and regulation of defensive measures are important in terms of accountability. This type of liability is more effective than directors' revocation, which may not be agreed by all shareholders of the acquiring company and more efficient that liability for violating fiduciary duties, which is difficult to prove and does not enjoy unitary jurisprudence. We observe that the European lawmaker follows the British model of stimulating directors towards maximum performance and not towards their struggle to preserve their function.

However, through diversified implementation of Directive 2004/25/CE on takeover bids, permitted defensive measures are found in varied forms.

Thirdly, we addressed typical directors' duties in the vicinity of insolvency in order to anticipate and minimize risk of personal liability. After identifying the expressions of enhanced duty of care in this difficult period for the company, we discussed the beneficiaries of fiduciary duties and applicability of the business judgment rule in the vicinity of insolvency. We consider that imminence of insolvency does not determine a veritable duty of loyalty owed by directors to the creditors of the company, in absence of a legal or contractual basis establishing a fiduciary relationship between them. We consider that a good faith and rational director should adjust his business decisions in this period to protect creditors' interests and reintegrate the company's assets, in order to pragmatically respond to the risk of personal liability in the event of insolvency.

Based on our analysis of the legal nature of directors' civil liability, **Chapter VII** approaches directors' liability towards *in bonis* companies and towards third parties. Following a study on Romanian and European jurisprudence, we observed procedural issues, remedies and sanctions in comparative law. By studying civil law and common law literature, we identified means of limiting and excluding directors' liability for nonfulfillment of fiduciary duties, both in terms of subjective and objective liability.

The complexity of liability for violating fiduciary duties is linked to the heterogeneous and imprecise nature of the company's best interest, which the director shall promote and protect at any time. The *ut universi* action is a simpler model than the derivative action, as it represents shareholders' will, who have common interests and expectations. The criterion of aggravated liability, which the Romanian legislator has chosen, namely *culpa levis in abstracto*, is an exigent standard. However, demands for reparation of corporate prejudice are often discouraged by procedural and functional obstacles encountered by minority shareholders.

Regarding limitation of liability under Romanian law, the duty of loyalty, as element of good faith, cannot be excluded or limited conventionally. Conventional limitation of directors' statutory duties is valid if it does not concern duties prescribed by mandatory rules. Although the law allows for increasing liability by the service contract, we consider that the transformation of the obligations of efforts into obligations of result is invalid.

Regarding liability insurance for management risk, we presented the results of a study on insurance policies offered on the Romanian market. We consider that risk insurance does not represent a real limit of directors' liability, on the contrary, following the incurring of tort or contractual civil liability and determination of the damage, the insurance will cover the damage suffered by the company and established by court. Management insurance is an improper liability limit because it does not prevent liability and financial sanctions, as statutory or contractual liability clauses do, which have an exonerating effect on the breach of duties. In the case of conventional limitation of liability, even though the director is at fault, the material damage will be covered by the company that voluntarily took the business risk. In case of management insurance coverage, the damage caused to the company will be borne by the director through his insurer.

Regarding subjective liability limits, the business judgment rule is viewed by Romanian literature as an exoneration cause of directors' liability. In our view, fulfillment of the conditions of the rule determines the non-fulfillment of the civil liability conditions. This is a cause for which, despite slight fault, the director will not be personally liable, but the rule determines ineffectiveness of legal liability provisions. For these reasons, we do not view the business judgment rule as an exonerating cause, but as an objective liability limit.

2. Conclusions of the doctoral thesis

Following the comparative doctrinal study, we ascertain that tendency in corporate law is convergence of institutions and a flexible approach. While judicial precedents have growing importance in civil law, common law courts increasingly take account of written regulations and soft law mechanisms. The pressure of the European legislator to harmonize EU member states' national laws on financial services and company law was an opportunity to confront civil law and common law traditions in the current context of conflicts of interest in multinational companies.

We consider that legal imports should not be viewed as success stories or failures of law modernization, because perfect transpositions are neither possible nor desirable, and import of an institution does not express the feasibility of importing a whole system. We support borrowing legal mechanisms from systems with rich jurisprudence, which explored certain institutions required by the market. Finally, noting the qualification of the business judgment rule in Romanian literature as an exoneration cause of directors' liability, based on our comparative law study and analysis of Romanian jurisprudence, we extracted the conclusions regarding the primary effects of the rule, namely the basis of avoiding liability, rationales of assigning the burden of proof and interpreting the game of legal and judicial presumptions.

IV. Selected literature

Allen, W. T., Kraakman, R.: *Commentaries and Cases on the Law of Business Organization*, 3rd edition, Wolters Kluwer Law and Business, New York, 2009.

Block, D. J., Barton, N. E., Radin, S. A.: *The Business Judgment Rule: Fiduciary duties of Corporate Directors*, 6th edition, Wolters Kluwer, New York, 2017.

Bodu, S. V.: *Piața de capital. Legea nr. 24/2017 privind emitenții de instrumente financiare și operațiuni de piață*, Rosetti, Bucharest, 2018.

Catană, R. N.: *Dreptul Societăților Comerciale, Probleme actuale privind societățile pe acțiuni. Democrația acționarială*, Sfera, Cluj-Napoca, 2006.

Cărpenaru S. D., Piperea, Gh., David, S.: *Legea Societăților. Comentariu pe articole*, C.H. Beck, Bucharest, 2014.

Cozian, M.: *Droit des sociétés*, Lexis Nexis, Paris, 2007.

Davies, P., Worthington, S.: *Gower and Davies' Principles of Modern Company Law*, 9th edition, Sweet & Maxwell, London, 2012.

Dumitrescu, H.: *Noul Cod civil. Comentariu pe articole*, C.H. Beck, Bucharest, 2012.

Fauvarque-Cosson, B., Mazeaud, D.: *European Contract Law - Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules*, Sellier, Munich, 2008.

Fleischer, H.: *Gegenwartsfragen der Geschäftschancenlehre im Englischen und Deutschen Gesellschaftsrecht*, in Taeger, J., Wiebe, A.: *Informatik – Wirtschaft – Recht. Regulierung in der Wissensgesellschaft,* Nomos, Baden-Baden, 2004.

Fleischer, A., Sussman, A. R., Weinstein, G.: *Directors' Fiduciary Duties in Takeovers and Mergers,* Wolters Kluwer, New York, 2017.

Graziadei, M.: *Virtue and Utility. Fiduciary Law in Civil Law and Common Law jurisdictions,* Andrew S. Gold and Paul Miller eds., Oxford University Press, London, 2015.

Grundmann, S.: *The evolution of trust and Treuhand in the 20th century,* Richard Helmholz & Reinhard Zimmermann eds., Oxford University Press, London, 1998.

Hauschka, C. E., Moosmayer, K., Lösler, T.: *Corporate Compliance. Handbuch der Haftungsvermeidung im Unternehmen*, 3rd edition, C.H. Beck, Munich, 2016.

Hertig, G.: *Western Europe's Corporate Governance Dilemma, Corporations, Capital Markets, and Business in the Law,* Kluwer Law International, 2000.

Hotca, M. A., Nemeș, V., Cărpenaru, S. D.: *Codul insolvenței comentat*, Universul Juridic, Bucharest, 2014.

Hüffer, K.: *Großkommentar zum AktG*, 9th edition, C.H. Beck, Munich, 2010.

Malaurie, Ph., Aynes, L., Stoffel-Munck, Ph.: *Drept civil. Obligațiile*, translated to Romanian, Wolters Kluwer Romania, Bucharest, 2010.

Pop, L., Popa, I. F., Vidu, S. I.: *Tratat elementar de drept civil. Obligațiile conform Noului Cod Civil,* Universul Juridic, Bucharest, 2012.

Prescure, T., Schiau, I.: *Legea societăților comerciale,* Hamangiu, Bucharest, 2009.

Raiser, T., Veil, R.: *Recht der Kapitalgesellschaften*, C.H. Beck, Munich, 2010.

Sealy, L., Worthington, S.: *Cases and Materials in Company Law*, 8th edition, Oxford University Press, London, 2007.

Todică, C.: *Răspunderea juridică civilă a administratorului societății comerciale. Studiu de doctrină și jurisprudență,* Ed. Universitară, Bucharest, 2012.

Valsan, R. D.: *Understanding Fiduciary Duties: Conflict of Interest and Proper Exercise of Judgment in Private Law*, McGill University Paper Studies, Montreal, 2012.