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Law and Economics

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IIIrd LESSON

Specific Features of Economic Law



Specific Features of Economic Law

- Approach driven by the economic law method
 - Functional
 - It addresses the role of law with respect to the solution of specific issues or problems connected to the functioning of the economic system
 - Open
 - Wide notion of law
 - Trasversal
 - With respect to sources of law, traditional legal disciplines and jurisdictions



Economic Law Goals

- Economic law addresses specific problematic aspects of the economic system
 - on the basis of
 - a unitary perspective
 - a systematic analysis of the relevant legal institutions
 - so economic law goes beyond the traditional boundaries between the various legal disciplines
 - private and public law
 - substantive and procedural law
 - and various jurisdictions
 - national, international, supranational, transnational laws
- For economic law purposes, the study of law should be divided by problematic areas



Why?

- Economic law examines single economic aspects or issues of the economic system in order to understand and assess the relation between such aspects and issues, on one hand, and the relevant legal regulation, on the other hand
 - Remember the distinction between the general and the special part of economic law
 - Allocation of decisional spaces between public authority and the market
 - Economic constitutional goals pursued by the legal system within a given economic system
 - Legal techniques that can be employed to promote market integration, to increase market competitiveness or the financial stability of an economic system



Economic Law Analysis

- It starts with a particular economic issue
- It then proceeds to assess the relevant legal rules
 - Multiple sources of law and/or plurality of jurisdictions
 - Constitutional law of an economic system can also comprise legislative or secondary norms if they are part of the fundamental legal elements of such economic system
 - Sources of law governing financial intermediation may be of supranational, national and self-regulatory nature
 - Rules that are part of distinct legal disciplines are also components of economic law if, and to the extent that, such rules are relevant to the establishment and functioning of an economic system



Economic Law as A Legal Science of Synthesis

- It combines materials of different disciplines with its own points of view, as it analytically studies and unifies in a single system the legal rules and institutions on an economic system
- Unlike the other legal sciences, economic law covers all legal rules that are relevant to the economic system
- All such rules are interpreted and systemised in order to find the intrinsic features deriving from the interactions between the various sets of rules and shaping the functioning of the economic system
- Economic law goes beyond the study of single legal segments in which an economic system is often divided



How?

- Economic law behaves as a common platform with its own analytical method
- Economic law differs from both private and public law but deals with their rules and it does so from its own perspective, that is analysing and systematising rules in their relation with the economic system



But in The Past?

- Economic law was regarded as a mere branch of public law without any scientific autonomy
 - State intervention in the economy
- Different views
 - Economic law
 - did not exist at the time of the liberal State of the XIX century
 - existed at the time of the Welfare State as law concerning the economic role and policies of the state (state owned enterprises, state monopolies, economic public programmes, etc.)
 - Economic law has always existed and does not coincide with state intervention in the economy (rules governing private economic activities, such as contract and property rules, represent a fundamental part of economic law)