



BASIC LEGAL STUDIES

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BASIC LEGAL STUDIES

1. How law was formed

Legal history or the history of law is the study of how law has evolved and why it changed. Legal history is closely connected to the development of civilisations and is set in the wider context of social history. Among certain jurists and historians of legal process, it has been seen as the recording of the evolution of laws and the technical explanation of how these laws have evolved with the view of better understanding the origins of various legal concepts; some consider it a branch of intellectual history. Twentieth century historians have viewed legal history in a more contextualised manner more in line with the thinking of social historians. They have looked at legal institutions as complex systems of rules, players and symbols and have seen these elements interact with society to change, adapt, resist or promote certain aspects of civil society. Such legal historians have tended to analyse case histories from the parameters of social science inquiry, using statistical methods, analysing class distinctions among litigants, petitioners and other players in various legal processes. By analysing case outcomes, transaction costs, number of settled cases they have begun an analysis of legal institutions, practices, procedures and briefs that give us a more complex picture of law and society than the study of jurisprudence, case law and civil codes can achieve.

1.1. The definition of Law and the Legal System, and the Legal systems of the World

The law is a system of rules that a society or government develops in order to deal with crime, business agreements, and social relationships. You can also use the law to refer to the people who work in this system.

The Legal system is a collection of law organized according to a guideline, which is valid and applicable in a country or a territory.

Law is the set of rules that guides our conduct in society and is enforceable through public agencies. Our relations with one another are governed by many rules of conduct—from important concepts of ethics and fair play to minor etiquette matters such as which fork to use and how to introduce strangers to one another.

Law is a system of rules that are created and enforced through social or governmental institutions to regulate behavior. Law is a system that regulates and ensures that individuals or a community adhere to the will of the state. State-enforced laws can be made by a collective legislature or by a single legislator, resulting in statutes, by the executive through decrees and regulations, or established by judges through precedent, normally in common law jurisdictions. Private individuals can create legally binding contracts, including arbitration agreements that may elect to accept alternative arbitration to the normal court process. The formation of laws themselves may be influenced by a constitution, written or tacit, and the rights encoded therein. The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people.

Civil law, civilian law or Roman law is a legal system originating in Europe, intellectualized within the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system which serves as the primary source of law. This can be contrasted with common law systems whose intellectual framework comes from judge-made decisional law which gives precedential authority to prior court decisions on the principle that it is unfair to treat similar facts differently on different occasions (doctrine of judicial precedent, or *stare decisis*).

Historically, a civil law is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Napoleonic, Germanic, canonical, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legal positivism.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law to be secondary and subordinate to statutory law. When discussing civil law, one should keep in mind the conceptual difference between a statute and a codal article. The marked feature of civilian systems is that they use codes with brief text that tend to avoid factually specific scenarios. Code articles deal in generalities and thus stand at odds with statutory schemes which are often very long and very detailed.

The purpose of codification is to provide all citizens with manners and written collection of the laws which apply to them and which judges must follow. It is the most widespread system of law in the world, in force in various forms in about 150 countries, and draws heavily from Roman law, arguably the most intricate known legal system dating from before the modern era.

Where codes exist, the primary source of law is the law code, which is a systematic collection of interrelated articles, arranged by subject matter in some pre-specified order, and that explain the principles of law, rights and entitlements, and how basic legal mechanisms work. Law codes are simply laws enacted by a legislature, even if they are in general much longer than other laws. Other major legal systems in the world include common law, Halakha, canon law, and Islamic law.

1.2. Legal systems of the world

Civilian countries can be divided into:

- those where Roman law in some form is still living law but there has been no attempt to create a civil code: Andorra and San Marino
- those with uncodified mixed systems in which civil law is an academic source of authority but common law is also influential: Scotland and Roman-Dutch law countries (South Africa, Zambia, Zimbabwe, Sri Lanka and Guyana)
- those with codified mixed systems in which civil law is the background law but has its public law heavily influenced by common law: Puerto Rico, Philippines, Quebec and Louisiana
- those with comprehensive codes that exceed a single civil code, such as Spain, Italy, France, Germany, Greece, Japan, Mexico: it is this last category that is

normally regarded as typical of civil law systems, and is discussed in the rest of this article.

The Scandinavian systems are of a hybrid character since their background law is a mix of civil law and Scandinavian customary law and have been partially codified. Likewise, the laws of the Channel Islands (Jersey, Guernsey, Alderney, Sark) are hybrids which mix Norman customary law and French civil law.

A prominent example of a civil-law code would be the Napoleonic Code (1804), named after French emperor Napoleon. The Code comprises three components: the law of persons, property law, and commercial law. Rather than a compendium of statutes or catalog of caselaw, the Code sets out general principles as rules of law. Unlike common law systems, civil law jurisdictions deal with case law apart from any precedence value. Civil law courts generally decide cases using codal provisions on a case-by-case basis, without reference to other (or even superior) judicial decisions. In actual practice, an increasing degree of precedence is creeping into civil law jurisprudence, and is generally seen in many nations' highest courts. While the typical French-speaking supreme court decision is short, concise and devoid of explanation or justification, in Germanic Europe, the supreme courts can and do tend to write more verbose opinions supported by legal reasoning. A line of similar case decisions, while not precedent per se, constitute jurisprudence constante. While civil law jurisdictions place little reliance on court decisions, they tend to generate a phenomenal number of reported legal opinions. However, this tends to be uncontrolled, since there is no statutory requirement that any case be reported or published in a law report, except for the councils of state and constitutional courts. Except for the highest courts, all publication of legal opinions are unofficial or commercial.

Civil law is sometimes referred to as neo-Roman law, Romano-Germanic law or Continental law. The expression civil law is a translation of Latin *jus civile*, or "citizens' law", which was the late imperial term for its legal system, as opposed to the laws governing conquered peoples (*jus gentium*); hence, the Justinian code's title *Corpus Juris Civilis*. Civil law practitioners, however, traditionally refer to their system in a broad sense as *jus commune*, literally "common law", meaning the general principles of law as opposed to laws peculiar to particular areas. (The use of "common law" for the Anglo-Saxon systems may or may not be influenced by this usage.)

Common law, also called Anglo-American law, the body of customary law, based upon judicial decisions and embodied in reports of decided cases, that has been administered by the common-law courts of England since the Middle Ages. From it has evolved the type of legal system now found also in the United States and in most of the member states of the Commonwealth (formerly the British Commonwealth of Nations). In this sense common law stands in contrast to the legal system derived from civil law, now widespread in continental Europe and elsewhere. In another, narrower, sense, common law is contrasted to the rules applied in English and American courts of equity and also to statute law. A standing expository difficulty is that, whereas the United Kingdom is a unitary state in international law, it comprises three major (and other minor) legal systems, those of England and Wales, Scotland, and Northern Ireland. Historically, the common-law system in England (applied to Wales since 1536) has directly influenced that in Ireland but only partially influenced the distinct legal system

in Scotland, which is therefore, except as regards international matters, not covered in this article. The legal systems in the United Kingdom have, since 1973, experienced integration into the system of European Union law, which has direct effects upon the domestic law of its constituent states—the majority of which have domestic systems that have been influenced by the civil-law tradition and that cultivate a more purposive technique of legislative interpretation than has been customary in the English common law. The regime of human rights represented by the European Convention on Human Rights (1950) has exercised a similar influence in the United Kingdom since the passage by Parliament of the Human Rights Act 1998.

The formation of laws themselves may be influenced by a constitution (written or unwritten) and the rights encoded therein. A constitution is the basic charter for a government; it describes that government and the relationships of its different parts to one another. A constitution also limits government powers and describes the basic rights of citizens with which the government cannot interfere.

A general distinction can be made between (a) civil law jurisdictions (including canon and socialist law), in which the legislature or other central body codifies and consolidates their laws, and (b) common law systems, where judge-made precedent is accepted as binding law. Historically, religious laws played a significant role even in settling of secular matters, which is still the case in some religious communities, particularly Jewish, and some countries, particularly Islamic. Islamic Sharia law is the world's most widely used religious law

	Common law	Civil law	Socialist law	Islamic law
Other names	Anglo-American, English, judge-made, legislation from the bench	Continental, Romano-Germanic	Social	Religious law, Sharia
Source of law	Case law, statutes/legislation	Statutes/legislation	Statutes/legislation	Religious documents, case law
Lawyers	Judges act as impartial referees; lawyers are responsible for presenting the case	Judges dominate trials	Judges dominate trials	Secondary role
Judges' qualifications	Experienced lawyers (appointed or elected)	Career judges	Career bureaucrats, Party members	Religious as well as legal training
Degree of judicial independence	High	High; separate from the executive and the legislative branches of government	Very limited	Ranges from very limited to high
Juries	Provided at trial level	May adjudicate in conjunction with judges in serious criminal matters	Often used at lowest level	Allowed in Maliki school, not allowed in other schools

Policy-making role	Courts share in balancing power	Courts have equal but separate power	Courts are subordinate to the legislature	Courts and other government branches are theoretically subordinate to the Shari'a. In practice, courts historically made the Shari'a, while today, the religious courts are generally subordinate to the executive.

1.3. Questions –Test Your knowledge:

- 1) Define the definition of law and separate it from ethics, and customs? What is the main separational form?
- 2) Define the definition of the law system.
- 3) Introduce us the the two large law systems with its' main specifications.
- 4) What are the main specification of the Civilian Law System?
- 5) What are the main specifications of the Common and Mixed Law system?
- 6) Please try to place Your country's legal system into the law systems of the world?

2. The Introduction of the Hungarian Legal system

As we settled earlier the definition of the Legal system is a collection of law organized according to a guideline, which is valid and applicable in a country or a territory.

Law is the set of rules that guides our conduct in society and is enforceable through public agencies. Our relations with one another are governed by many rules of conduct — from important concepts of ethics and fair play to minor etiquette matters such as which fork to use and how to introduce strangers to one another.

The Hungarian legal system consists of two major parts, one is the Private Law part and the other one is the Common law.

2.1. Background of The Hungarian Legal System

Hungary is an independent, democratic constitutional state. According to the revised Constitution that came into force on 2012, Hungary is a parliamentary republic. The Hungarian legal system is based on the German-Austrian legal system, and has a statutebased civil and criminal law system. The main sources of law are:

- the constitution
 - acts of parliament
 - governmental and ministerial decrees
 - EU law
- The legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and shall harmonize the internal laws and statutes of the country with the obligations assumed under international law.

Hungary is a signatory to a number of international conventions and bilateral treaties which provide for the recognition and enforcement of awards from other states.

The Constitution The basic and supreme law of the Republic of Hungary is the Constitution. The Government bears the obligation of submitting to Parliament the Bills necessary for the enactment of the Constitution. The Hungarian Constitution regulates two classical constitutional areas: state administration (national government, local government, and organizations for the protection of rights) and the listing of the basic rights of citizens. The Parliament The Hungarian Parliament is a legislative body whose range of law-making activity is extensive.

Every Hungarian citizen at the age of 18 and over has the right to vote, and is at the same time eligible to be a candidate for elective office. In the Parliament legislative supervision is exercised during plenary sessions through questions and interpellations. In addition to the plenary sessions, the parliamentary committees also play a significant role in the supervision of the executive branch of government. There are also individual parliamentary control bodies, like the State Audit Office and the institution of the Ombudsman. Within its competence, Parliament enacts the Constitution of the Republic of Hungary; frames laws; ratifies the international treaties that are of outstanding significance for the external relations of the Republic of Hungary; elects the President of the Republic, the members of the Constitutional Court, the ombudsman to deal with the observation of civil rights and the rights of national and ethnic minorities, the President and Vice Presidents of the State Audit Office, the President of the Supreme Court and the Chief Prosecutor.

2.2. The President

The President of the Republic is Hungary's head of state, who is elected by Parliament by secret ballot for a term of five years. The President of the Republic may be re-elected for this office for no more than one additional term. The traditional rights of the head of state, also set down in the Hungarian Constitution, have been defined in relation to legislative, executive, and judicial authority, according to a system of separation of powers. His sphere of authority as regards judicial power includes the appointment of judges and the granting of individual pardons. The President of the Republic concludes international treaties and agreements on behalf of the Republic of Hungary. If the subject of the agreement belongs under the competence of the legislation, the prior agreement of Parliament is required for concluding the agreement. The Constitutional Court The Constitutional Court has existed as an institution in Hungary since 1989, established by Act I of the Constitution. Actually it has been functioning since January 1, 1990. The Constitutional Court oversees the constitutionality of legal provisions. Any law or legal measure found unconstitutional is annulled by the Constitutional Court. In the cases defined by the law, anyone may initiate proceedings at the Constitutional Court. The eleven members of the Constitutional Court are elected by Parliament. Two-thirds of the affirmative votes of the Members of Parliament are necessary for election to the Constitutional Court. The law defines the main tasks of the Constitutional Court as follows: it interprets the Constitution; it provides normative standards and supervision over the constitutionality of laws; it reconciles the

differences between international and domestic law; it renders decisions on constitutional challenges; it determines negligence in violations of constitutionality; it renders decisions on debates of authority; it establishes the public responsibilities of the head of state and other public officials; and it determines the spheres of authority of municipalities and local authorities, and interprets limitations on public referendums. The Constitutional Court is the only forum in Hungary whose decisions are binding on everyone. The Ombudsman It is the duty of the Parliamentary Commissioner (Ombudsman) for Civil Rights and Ombudsman for the protection of national and minority rights to investigate any abuse of constitutional rights or that of nationality or ethnic minority rights that has come to their attention, and to initiate general or particular measures for redress. In cases defined by law, anyone may propose that the Ombudsman take action. The Ombudsmen for civil rights and for national and minority rights are elected, on the nomination of the President of the Republic, by Parliament. For the protection of certain constitutional rights, Parliament may elect separate Ombudsmen. Each Ombudsman reports on his activities and experiences annually to Parliament.

2.3. The Government

The Government consists of the Prime Minister and the government ministers. The Prime Minister is elected by a simple majority vote of the Members of Parliament. Parliament decides on the election of the Prime Minister and on acceptance of the Government program at the same time. The ministers are proposed by the Prime Minister, and appointed and relieved of their duties by the President of the Republic. The Government can issue decrees and also conclude international agreements in the name of the Republic of Hungary. The establishment of ministries falls within the competence of Parliament and law defines their status. Heading each ministry is a single responsible minister who is also a member of the cabinet. The Government takes the necessary measures to ensure public law and order and public security, participates in the determination of foreign policy as well as concludes international agreements on behalf of the Government of the Republic of Hungary. In its own sphere of functions the Government issues decrees and passes resolutions, which are signed by the Prime Minister. In the performance of their functions, the Prime Minister and the members of the Government may issue decrees. No decree and resolution of the Government may be contrary to the law and any decree of the Prime Minister and the members of the Government must not be contrary to any law or any Government decree and resolution.

2.4. Local Self-Government

The territory of the Republic of Hungary consists of administrative units including the capital and 19 counties. Local self-government means autonomous and democratic management of local affairs by the communities concerned and exercise of local public authority. The members of the representative body are elected for a term of four years.

2.5. The Hungarian Judicial System

Based on Act 2012 on the Constitution of the Republic of Hungary and on Act LXVI of 1997 on the Organization and Administration of the Courts, in Hungary justice is administered in a four-level system by the Supreme Court, the regional courts of appeal, the county courts (including the Municipal Court of Budapest) and the local courts. First instance jurisdiction in most matters rests with the local courts, effecting the principle that the overwhelming part of the cases shall be settled at the local level, within the easiest reach of the parties. Appeals against the decisions of the local courts may be submitted to the county courts (and the Municipal Court), which thus function mainly as appellate courts, however, in cases specified by law (e.g. in civil cases with a minimum value of HUF 10 million (approximately € 40.000) and criminal cases with a sentence up to life imprisonment) they have first instance jurisdiction. The territorial competence of the local and county courts is determined by and identical with the areas of public administration.

The regional courts of appeal hear the appeals lodged against the decisions of the local and county courts. There are five courts of appeal throughout the country in Budapest, Szeged, Pécs, Debrecen and Győr. Taking over the task of examining appeals, the regional courts of appeal significantly contributed to the reduction of the backlog of cases before the Supreme Court and as a result the Supreme Court is now able to concentrate on its main function of ensuring the uniform application of law and examining applications for the review of final judgments as extraordinary remedy. The areas of jurisdiction include criminal, civil and administrative law. Administrative judgments prevail within the framework of normal courts, which according to existing regulations must review the legality of administrative actions. Their jurisdiction is related to the application of the law; that is, judges do not make the law. The Supreme Court of the Republic of Hungary sets guidelines based on principles for the judicial work of every court. The directives and decisions in questions of principle of the Supreme Court are binding on all courts of the country. They are accessible on the web in Hungarian.

2.6. The Court of Arbitration

The court of arbitration is an independent court, which authorization derives from the agreement concluded by the business parties if the jurisdiction of the arbitration court for the cases of disputes is stipulated in the agreement. The scope of the stipulation of the arbitration court is very wide, especially if the case has an international relation. The agreement of the Parties regarding the stipulation of the arbitration court must be put down in writing. The arbitration clause is included either in the original contract or drafted in a separate agreement. If the Parties have concluded the agreement regarding the stipulation of the arbitration court, they cannot later change the scope of competence of the arbitration court to the scope of competence of the ordinary court. If they decide still so as described above, the ordinary court will dismiss the case. The Arbitration Act describes three general conditions regarding the stipulation of the arbitration clause:

- firstly that one of the contracting parties must run an enterprise,
- secondly that the Parties must have disposal over the subject of the proceeding, and

- thirdly – as mentioned above - that the stipulation must put down in writing. There are some sorts of litigation where the stipulation of the arbitration court is invalid. This kind of lawsuits can be found first of all in the legal field of family law and administrative law. The number of the judges must be odd. The Parties can choose together the judges, so they have the chance to choose those judges, which are expert regarding the subject of the case. It is a commonly used method that one-one Party chooses one-one judge and the judges chosen by the Parties select the third judge. The arbitration court procedure is similar to the ordinary court procedure, as there is an action, a counter-action, hearing of the witnesses and experts etc. The effect of the judgment of the arbitration court is also the same as the effect of the judgment of the ordinary court, as the Parties are bound by the provisions implied therein. However it is not possible to appeal against the judgment, only the annulment of the judgment can initiate before the ordinary court in certain cases. As the proceeding of the arbitration court is not public, the business relations and business interests of the Parties remain untouched by the public.

2.7. Questions –test Your knowledge:

- 1) List the Hungarian sources of Law in Hungary.
- 2) List the sources of Law in Your country, and compare it with Your country's sources of law system.
- 3) Introduce shortly the Hungarian Administration Sytem, especially the rules for working of the Parliament.
- 4) Introduce the basics of the Administration Sytem of the country of Your origin.
- 5) What is highest judicial forum in Hungary, and if You know, than in Your home Country.

3. The legal source and legislative hierarchy

In order to understand the legislative hierarchy of Hungary, first we have to clarify the concept of legal source. The legal source has a double content, on the one hand it denotes the legislator, the institution that specifies the laws which have the authority of legislation, law issuing. On the other hand it denotes the law itself, its forms of appearance (this is the external or technical source of law).

Internal or material source of law: by this we mean the creator, maker of law, those state institutions, which are entitled to issuing laws, respectively all those manifestations and factors from which the power and validity of law derives. (i.e. Parliament, Government).

External or technical source of law: that form of the law in which the law appears (i.e. acts, decrees), as well as the promulgation of the law in an official form, through which the laws receive adequate publicity. In our country, the laws are published in official form in Magyar Közlöny and in the portfolio gazettes.

The law is a collective term, which includes every form of appearance of the law.

The following laws are considered legal sources:

Constitution or Fundamental Law – The new constitution of Hungary came into force on 1st of January 2012, it has the official denomination of Fundamental Law of Hungary.

Acts, the most important legal sources after the constitution, acts are framed by the Parliament. For the passing of acts with a significant importance, a qualified majority is needed – which means that 2/3rd of all or present Members of Parliament must vote for it; – apart from the year of issuing, the serial number of the acts is denoted with Roman numerals, i.e. 2013. year V. act of the Civil Code, 2012. year C. act of the Code of Penal Law, 2012. year I. act of the Labor Code.

/Decree-laws – not valid form of legal source anymore, but we can find some decree-laws, which must be applied until abrogation/

Decree – there are several types of decrees, the Government creates governmental decrees, while the Prime Minister and the Ministers create ministerial decrees.

Local Government Decrees – in Hungary local governments have decree creation activity, too. These decrees differ from the other types of decrees by being effective only on the local government's venue.

The above mentioned system of laws has a hierarchical connection, which means that laws are in a subordinate/superordinate relation with each other, so an inferior law can not be opposite to a superior one.

The Constitutional Court has a remarkably essential role in the observance of the law hierarchy. Both the bills and the accepted, but not yet announced laws preliminary (which is called preliminary compliance control), or the subsequent examination of the already announced laws (which is called subsequent compliance control) belongs to the competence of the Constitutional Court, in terms of constitutionalism.

The hierarchy of legal sources can be represented best with a pyramid shape. As it can be seen on the figure, the CONSTITUTION is the most important law, this stands on the top of the law hierarchy, none of the other laws can be opposite to it. This is valid for the following legal sources, too, the content of a law from a smaller level can not be opposite to a law from a higher level (i.e. it can not establish a disposal that is adverse to the content of a law on a higher level). If two legal sources are on the same level, out of which one regulates generally, while the other regulates specially the given social relation, then the special law must be applied.

However they do not belong to the hierarchy of legal sources, it is worth mentioning here the other means of governmental control:

- resolution
- directive
- statistical announcements (KSH)
- legal guidings
- statement of the president of the economic competition bureau
- standards
- guidelines

The other legal means of governmental control apply only to government institutions and they provide help for law enforcement and interpretation.

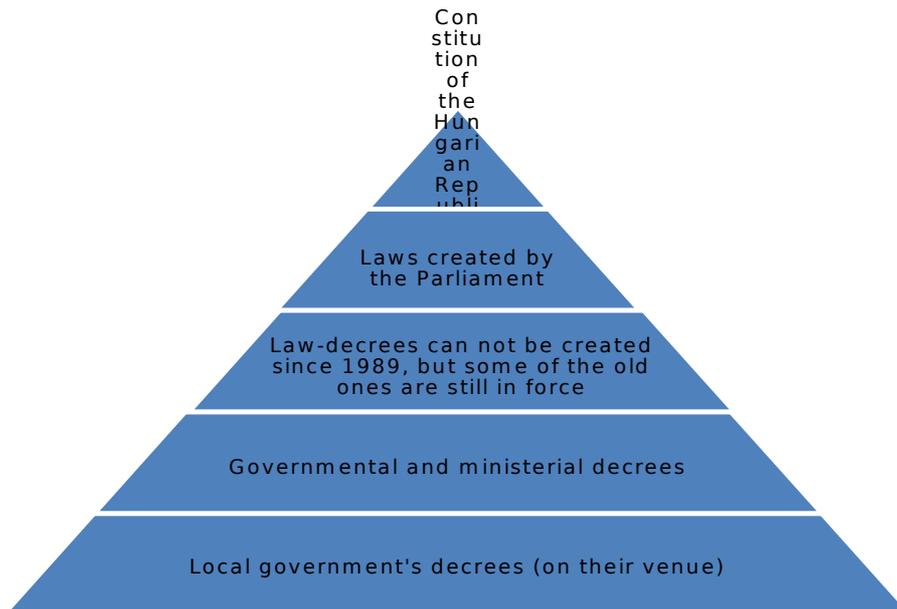


Figure 1.1: Hierarchy of the legal sources

3.1. *The concept of law and structural elements:*

Under the notion of the law we partly mean a collective term for the legal sources and on the other hand, the law is a generally valid conduct rule, compulsory for everybody, which is created by the state or some governmental institution, which assures the effectiveness of it with the power of compulsion, if it is necessary.

3.2. *Validity and effect of the laws*

3.2.1. *Validity of the law*

The validity of the law means the compulsory power of the norm. The validity of the legal norm has 3+1 general and collective conditions, the absence of any of these leads to the voidness of the law. The validity conditions are the following:

- The law can be created only by the entitled governmental institution. (i.e. laws only by the Parliament),
- General and special procedural rules that concern the creation of law must be observed. (i.e. during legislation the parliamentary law),
- The created law must fit in the hierarchy of the legal sources. (i.e. a decree should not be opposite to a law),
- +1 Published suitably (i.e. Magyar Közlöny).

The concept of the effect of the law must be bounded from the validity of the law. The effect of the law can be examined only in the case of a valid law. The effect of the law presents in which territorial relation, namely where does the valid law prevail, this is called territorial effect, to which legal entities, namely to who it spreads, this is called personal effect, and when does the law prevail, this is called the temporal effect.

3.2.2. *There are 3 different types of law effects:*

3.2.2.1. Temporal effect:

The temporal effect of the law presents the time when the law can be applied and in what temporal bounds does the law prevail. Usually, the start of the temporal effect is the day of the law's proclamation. However, in the case of a complicated law, the start of the temporal effect occurs 30, 60, 90 or more days after its proclamation.

Legal literature also knows the problem of laws that are created with a retrospective effect (*ex tunc*), in this case the law is ordered by the legislator to be applied before the proclamation of it. However, the retrospective effect corresponds to the requirements of the legal security only if a given law does not establish any obligation for the time before it's proclamation and it does not declare a conduct unlawful. Usually, the end of the temporal effect is considered the time when a newer law is created for the given domain.

3.2.2.2. Territorial effect:

The territorial effect of the law presents the geographical area where the law needs to be applied. According to a general rule, hungarian laws must be applied on the territory of the Hungarian Republic (an exception to this is the Code of Penal Law, which has a so-called nature of spanning through frontiers, this means that a hungarian citizen can be punished for crimes committed in a foreign country, even if according to that country's law the given crime is not punishable). There are legal norms which are only applied on smaller geographical areas, these are i.e. local government decrees, which are executory only on the given locality's territory (Decrees of the local government of the city of Debrecen for example can be applied inside the territory of Debrecen).

3.2.2.3. *Personal effect:*

The personal effect of the law denotes the circle of recipients, namely whom does the legal regulation concern. The main rule here is that hungarian laws must be applied to all legal entities that reside on the territory of the Hungarian Republic, so not only hungarian, but foreign citizens, too. Your knowle

3.3. *Questions –Test Your knowledge.*

- 1) What are the legal sources in Hungary?
- 2) What the hierarchy of Legal Sources mean?
- 3) Which is the special Hungarian Court which interprets the Constitution, and also audits the hierarchy of the sources of Law system in Hungary?

- 4) What are the three basic rules of the validity of Law in Hungary?
- 5) What is the personal effect of the sources of Law?
- 6) What is the territorial effect of the Law in Hungary?
- 7) What are the sources of Law under Governmental control?

4. The Hungarian Court System

In Hungary, justice shall be administered by the following courts: The Curia, the regional courts of appeal, the regional courts, the district courts and the administrative and labour courts.

4.1. District courts

There are 111 district courts in Hungary located in major cities. The district courts proceed only in first instance. District courts shall have jurisdiction in first instance of all actions which are not delegated under the competence of regional courts by law. Groups may be established at district courts to handle certain types of cases.

District courts are led by the President. District courts are not legal entities however the President thereof might undertake obligations in accordance with the rules on the management of public finances in a manner stipulated in the internal rules of the regional court.

4.2. Administrative and labour courts

There are 20 administrative and labour courts located on the seat of regional courts. Administrative and labour courts shall proceed in the first instance in cases reviewing administrative decisions, and in cases regarding employment relationships and legal relationships of an employment nature. Administrative and labour courts are led by the President, but they are not legal entities. Groups may be established at administrative and labour courts to handle certain types of cases.

4.3. Regional courts

There are 20 regional courts in Hungary in the 19 country of Hungary and in Budapest (Budapest-Capital Regional Court).

The regional court shall proceed as the first instance court – in cases defined by law (Code of civil procedure and Code of criminal procedure) – and review appeals lodged against the decisions of district courts and administrative and labour courts in the second instance.

Regional courts are led by the President, and they are legal entities. Chambers, groups as well as criminal, civil, economic and administrative and labour judicial colleges shall operate at regional court. Colleges may operate jointly.

4.4. -Regional courts of appeal

There are 5 regional court of appeal in Hungary. The regional court of appeal shall review appeals - in second or third instance - submitted against the decisions of district courts or regional courts and shall proceed in other cases referred to its jurisdiction. Regional courts of appeal are led by the President, and they are legal entity. The regional court shall operate chambers as well as criminal and civil judicial colleges.

4.5. Curia of Hungary

The Curia is the highest judicial authority in Hungary. Under the authority of its President it has three departments: criminal, civil and administrative-labour law departments. Each department has various chambers: chambers hearing appellate cases, chambers passing uniformity decisions, chambers issuing decisions on principles, as well as working groups examining judicial practice.

Within the framework of the departments, the judges administer justice in chambers consisting of three judges. A chamber adopting uniformity decisions consists of five judges chaired by the head of the section/department concerned, however, in cases requiring the collaboration of several sections/departments, the size of the chamber increases to seven members.

The Curia guarantees the uniform application of law. The decisions of the Curia on uniform jurisdiction are binding for other courts.

The responsibilities of the Curia are the following:

- examination appeals submitted against the decisions of the regional courts and the regional courts of appeal in cases defined by law,
- review final decisions if these are challenged through an extraordinary remedy,
- adopting uniformity decisions, which are binding for all other courts,
- analysis final decisions to examine and explore judicial practice,
- publishing decisions on principles,
- passing decisions in cases where local government decrees violate legal rules,
- passing decisions in cases where the local government fails to legislate as laid down in the act on local governments,
- other duties referred to its authority by law.

4.6. The Constitutional Court of Hungary

The Constitutional Court of Hungary was set up in 1989-1990, as a custodial court for the new democracy of Hungary. The Constitutional Court of Hungary (Hungarian: Magyarország Alkotmánybírósága) is a special court of Hungary, making judicial review of the acts of the Parliament of Hungary. The official seat of the Constitutional Court is Budapest. Until 2012 the seat was Esztergom. The Constitutional Court is composed of 15 judges since September 1, 2011 (previously, the Court was composed of 11 judges). The members then elect the President of the Court from among its members in a secret ballot. One or two Vice-Presidents, appointed by the President of the Court, stand in for the President in the event of his absence for any reason. The

constitutional court passes on the constitutionality of laws, and there is no right of appeal on these decisions. The Constitutional Court serves as the main body for the protection of the Constitution, its tasks being the review of the constitutionality of statutes, and the protection of constitutional order and fundamental rights guaranteed by the Constitution. The Constitutional Court performs its tasks independently. With its own budget and its judges being elected by Parliament it does not constitute a part of the ordinary judicial system.

The law defines the main tasks of the Constitutional Court as follows: it interprets the Constitution; it provides normative standards and supervision over the constitutionality of laws; it reconciles the differences between international and domestic law; it renders decisions on constitutional challenges; it determines negligence in violations of constitutionality; it renders decisions on debates of authority; it establishes the public responsibilities of the head of state and other public officials; and it determines the spheres of authority of municipalities and local authorities, and interprets limitations on public referendums. The Constitutional Court is the only forum in Hungary whose decisions are binding on everyone.

4.7. The Court of Arbitration

The court of arbitration is an independent court, which authorization derives from the agreement concluded by the business parties if the jurisdiction of the arbitration court for the cases of debates is stipulated in the agreement. The scope of the stipulation of the arbitration court is very wide, especially if the case has an international relation. The agreement of the Parties regarding the stipulation of the arbitration court must be put down in writing. The arbitration clause is included either in the original contract or drafted in a separate agreement. If the Parties have concluded the agreement regarding the stipulation of the arbitration court, they cannot later change the scope of competence of the arbitration court to the scope of competence of the ordinary court. If they decide still so as described above, the ordinary court will dismiss the case. The Arbitration Act describes three general conditions regarding the stipulation of the arbitration clause:

- firstly that one of the contracting parties must run an entertainment,
- secondly that the Parties must have disposal over the subject of the proceeding, and
- thirdly – as mentioned above - that the stipulation must put down in writing. There are some sorts of litigation where the stipulation of the arbitration court is invalid.

4.8. Questions – test Your knowledge:

- 1) Introduce the four level of the Hungarian Court System.
- 2) What is the difference of the Regional Court and the Regional Court of Appeal?
- 3) What are the main tasks of the highest court (The Curia) of Hungary?
- 4) What are the main tasks of the Constitutional Court of Hungary?
- 5) Does Your country have a Constitutional Court and if yes, what are its' tasks?
- 6) What are the tasks of the Arbitration Court of Hungary?

5. THE LAW OF PERSONS AND THE FAMILY LAW IN HUNGARY

5.1. *The law of persons*

The law of persons frames the rules of the natural persons, and the legal persons.

The natural persons are human beings, who have the widest ranges of rights and obligations according to the Hungarian Law. The rights and obligations are written in the Acts of Hungary, the basic rights and obligations can be found in the Constitution, and the Civil Law code. Other rights and obligations can be found in the Act which rules the legal situation in which the natural person is involved (like in a labour law situation the Labour Law Code is the one that summarizes the basic rights and obligations, for example about the Employment contract).

A legal person is (less ambiguously legal entity) a non-human entity, in other words, any company, organization, firm, or foundation that is recognized as having all privileges and obligations that natural persons have except those that can be linked only to human beings (like the right to vote or get married). Otherwise legal persons can have all the rights and obligations natural persons have such as having the ability to enter into contracts, the right to own a property or to sue, and to be sued. Legal persons get their legal capacity by being established and registered at the County Court or established with an Act of Parliament.

According to the Law: All persons shall have legal capacity; all persons shall be entitled to have rights and obligations.

Unilateral statements limiting legal capacity shall be null and void

5.1.1. *The basic rights of persons*

5.1.1.1. *Protection of rights relating to personality.*

(1) Everyone is entitled to freely practice his personality rights within the framework of the law and within the rights of others and to not be impeded in exercising such right by others.

(2) Human dignity and the related personality rights must be respected by all. Personality rights are protected under this Act.

(3) Personality rights shall not be considered violated by any conduct if the person affected has given prior consent thereto.

5.1.1.2. *Specific personality rights.*

The following, in particular, shall be construed as violation of personality rights:

a)

any violation of life, bodily integrity or health;

- b)
any violation of personal liberty or privacy, including trespassing;
- c)
discrimination;
- d)
any breach of integrity, defamation;
- e)
any violation of the right to protection of privacy and personal data;
- f)
any violation of the right to a name;
- g)
any breach of the right to facial likeness and recorded voice.

5.1.1.3. Protection of the personality rights of politically exposed persons

Exercising the fundamental rights relating to the free debate of public affairs may diminish the protection of the personality rights of politically exposed persons for overriding public interest, to the extent necessary and proportionate, without prejudice to human dignity.

5.1.1.4. Right to integrity and reputation

- (1) The integrity of a person is considered violated when a false and malicious oral statement is uttered publicly to damage that person's reputation, and to make people have a bad opinion of such person.
- (2) Defamation means when something bad about someone that is not true, or a true fact with an untrue implication is published or disseminated in an abusive attack on that person's good name.

5.1.1.5. Right to privacy

- (1) The right to the protection of privacy shall, in particular, cover the confidentiality of correspondence protection, professional secrecy and commercial secrecy.
- (2) Invasion of privacy shall, in particular, cover the unauthorized access to and use of private secrets, including publication and disclosure to unauthorized persons.

5.1.1.6. Right to commercial secrecy.

Know-how. Trade secrets shall include any fact, information and other data, or a compilation thereof, connected to economic activities, which are not publicly known or

which are not easily accessible to other operators pursuing the same economic activities, and which, if obtained and/or used by unauthorized persons, or if published or disclosed to others are likely to imperil or jeopardize the rightful financial, economic or commercial interest of the owner of such secrets, provided the lawful owner is not subject to actionability in terms of keeping such information confidential.

(2) Commercial secrecy shall also apply to technical, economic and other practical knowledge of value held in a form enabling identification, including accumulated skills and experience and any combination thereof (hereinafter referred to as „know-how”), if acquired, used, disclosed or published in violation of the principle of good faith and fair dealing. This protection shall not apply where a person obtains the know-how, or any knowledge which essentially has the same attributes:

a)

by means of development independent of the proprietor; or

b)

by way of testing or analyzing a lawfully acquired product or lawfully received service.

(3) Breach of commercial secrecy shall not be relied on as against a person who has obtained trade secrets or know-how from third parties in good faith, in the course of trade for consideration.

5.1.1.7. Right to facial likeness and recorded voice

(1) The consent of the person affected shall be required for producing or using his/her likeness or recorded voice.

(2) The consent of the relevant person is not required for recording his/her likeness or voice, and for the use of such recording if made of a crowd or in a public.

5.1.2. Legal persons

Legal persons are the most ancient legal institutions, rooted in Roman law, providing enhanced security as they protect the owner of the asset against the business risk of the legal person's activity. The Hungarian legal system, even in the era of socialist law, also regulated several forms of legal persons as full profit and non-profit organisations. Despite the uninterrupted presence of legal persons, it was only in the 90s that business organisations and also the non-profit organisations became widespread due to the modernisation of the Companies Act on and the revival of civil society. The present study commences by introducing the general structure of the Hungarian Civil Code of 1959 and continues with an analysis of the preliminary issues of the codification of the new Civil Code of 2013. Following that, the author provides a detailed presentation of the general rules on legal persons in the new Civil Code, highlighting the new elements in it (i.e. more freedom and the new default rules regime).

A legal person is (less ambiguously legal entity) a non-human entity, in other words, any company, organization, firm, or foundation that is recognized as having all

privileges and obligations that natural person have except those that can be linked only to human beings (like the right to vote or get married). Otherwise legal persons can have all the rights and obligations natural persons have such as having the ability to enter into contracts, the right to own a property or to sue, and to be sued. Legal persons get their legal capacity by being established and registered at the County Court or established with an Act of Parliament.

The term "legal person" is however ambiguous because it is also used in contradistinction to "natural person", i.e. as a synonym of terms used to refer only to non-human legal entities.

While human beings acquire legal personhood when they are born (or even before in some jurisdictions), juridical persons do so when they are incorporated in accordance with law.

Legal personhood is a prerequisite to legal capacity, the ability of any legal person to amend (enter into, transfer, etc.) rights and obligations. In international law, consequently, legal personality is a prerequisite for an international organization to be able to sign international treaties in its own name.

Artificial personality, juridical personality, or juristic personality is the characteristic of a non-living entity regarded by law to have the status of personhood.

A juridical or artificial person (Latin: *persona ficta*; also juristic person) has a legal name and has certain rights, protections, privileges, responsibilities, and liabilities in law, similar to those of a natural person. The concept of a juridical person is a fundamental legal fiction. It is pertinent to the philosophy of law, as it is essential to laws affecting a corporation (corporations law).

Juridical personhood allows one or more natural persons (*universitas personarum*) to act as a single entity (body corporate) for legal purposes. In many jurisdictions, artificial personality allows that entity to be considered under law separately from its individual members (for example in a company limited by shares, its shareholders). They may sue and be sued, enter contracts, incur debt, and own property. Entities with legal personality may also be subjected to certain legal obligations, such as the payment of taxes. An entity with legal personality may shield its members from personal liability.

In some common law jurisdictions a distinction is drawn between corporation aggregate (such as a company, which has a number of members) and a corporation sole (which is where a person's public office is deemed to have a separate personality from them as an individual). Both have separate legal personality. Historically most corporations sole were ecclesiastical in nature (for example, the Archbishop of Canterbury is a corporation sole), but a number of other public offices are now formed as corporations sole.

The concept of juridical personality is not absolute. "Piercing the corporate veil" refers to looking at the individual natural persons acting as agents involved in a company action or decision; this may result in a legal decision in which the rights or duties of a

corporation or public limited company are treated as the rights or liabilities of that corporation's members or directors.

The concept of a juridical person is now central to Western law in both common-law and civil-law countries, but it is also found in virtually every legal system.

5.1.3. Legal capacity of legal persons

(1) All legal persons shall have legal capacity; they shall be entitled to have rights and obligations.

(2) The legal capacity of legal persons shall cover all rights and obligations that do not inherently pertain solely to individual human beings.

(3) The provisions on the protection of personality rights shall also apply to the inherent rights

of legal persons, unless such protection, by virtue of its very nature, can only be given to private persons.

(4) Legal persons may be established in a form defined by law, for the pursuit of activities and objection which are not prohibited by law; any instrument of constitution made in violation of this provision shall be null and void.

(5) A legal person shall have its own name and seat, shall have assets separate from its members and founders, and shall have a management and representative body

5.1.4. Foundation of legal persons

Freedom of establishment of legal persons

(1) Persons shall have freedom of establishment of a legal person by means of a contract, charter document or articles of association (hereinafter referred to collectively as „instrument of constitution”), and shall themselves decide on the legal person’s organizational structure and operational arrangements.

(2) As regards relations between members and founders, and between them and the legal person, and as regards the organizational structure and operational arrangements of the legal person, in the instrument of constitution the members and founders may derogate from the provisions of this Act relating to legal persons, save where Subsection (3) applies.

(3) Members and founders of a legal person may not derogate from the provisions of Civil Law Code: as if it is precluded by law; or where any derogation clearly violates the interests of the legal person’s creditors, employees and minority members, or it is likely to prevent the exercise of effective supervision over legal persons

(4) Legal persons shall enter into existence upon registration by the court based on the instrument of constitution made out for the type of legal person in question. The court of registry may refuse to register a legal person on grounds specified by the relevant legislation.

Legal persons are established for a definite or indefinite period. If the instrument of constitution does not provide for the term of the legal person, the legal person enters into existence for an indefinite duration

5.1.5. The constitution of legal persons

The instrument of constitution (establishment document) of a legal person shall expressly indicate the founders' intent to set up the legal person and shall contain obligatory the following elements:

- a) the legal person's name;
- b) the legal person's registered office;
- c) the legal person's purpose or main activity;
- d) the names of the founders of the legal person, including their home address or registered office;
- e) the capital contributions prescribed, the value of such contributions, as well as how and when such assets are to be made available; and
- f) the legal person's chief executive officer

5.1.6. Name of legal persons

The name of a legal person must differ from the names of other previously registered legal persons to an extent that they should not be confused. Where the registration of several legal persons is requested under names which are identical or may be confused, the name in question may be used by the applicant having submitted the first application.

The names of previously founded legal persons, can be found in the Registry of the Regional Court in the County where the legal person was established.

The name of a legal person may not convey an unrealistic impression. The name of the legal person shall contain a designation relating to the type or form of the legal person

The type of legal person, and if the name contains an indication of the legal person's activity as well, the legal person's activity shall be fixed in Hungarian, in conformance with the rules of Hungarian grammar.

5.1.7. Obligation of capital contribution

(1) Founders and members of legal persons are required to provide capital contribution to the legal person at the time of foundation and also in cases where membership rights are otherwise acquired. Capital contributions made available to legal persons are not recoverable, and equivalent compensation may not be demanded.

(2) If the founders and members of legal persons are not required to provide capital contribution, liability for the legal person's debts shall fall upon its members, or in the case of non-membership legal persons, upon the person exercising founders' rights. If

the guarantee obligation falls upon several persons, their liability shall be joint and several.

5.1.8. Statutory seat of legal persons

The registered office of a legal person shall also function as its statutory seat, where the legal person shall have facilities for receiving legal correspondence addressed to the legal person, and

where the legal person is to provide access to documents specified by the relevant legislation.

5.1.9. Form and value of capital contributions

(1) The capital contribution required from members and founders may be provided to the legal person in the form of cash or in the form of consideration other than in cash.

(2) The founder or member may provide asset contribution by transferring ownership rights of tangible or intangible assets to the legal person.

(3) If, at the time of transfer, the value of asset contribution does not reach the value indicated in the instrument of constitution, the legal person may demand payment of the difference from the person having provided the asset contribution within five years from the date of transfer.

5.1.10. Registration of legal persons

5.1.10.1. Submission of applications for registration

(1) An application for the registration of a newly established legal person shall be submitted by the person appointed to represent the legal person.

(2) The representative shall be held liable towards the founders for damages resulting from his failure to submit the application in due time, also if the notification submitted is incomplete or deficient, in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

5.1.10.2. Basic principles for the registration of legal persons

(1) All entries made to the register of rights, facts or data must be evidenced by a document, court or administrative decision specified by law.

(2) The register shall be construed as an official public register; the rights, facts and data (hereinafter referred to as „data of record”) it contains shall be presumed to exist and to be authentic. Under no circumstances shall the lack of knowledge of any data of record constitute an excuse. In respect of parties acting in good faith, a legal person may not be excused on the grounds that certain data it has reported, and thus registered, was untrue. Unless proven to the contrary, it shall be presumed that a party acquiring certain rights for consideration relying upon the register was acting in good faith.

(3) The general public shall have unlimited access to the register, and notes may be made and certified true copies or extracts may be requested thereof.

5.1.10.3. Publication of legal statements

Where any obligation of publication is prescribed for legal persons in this Act, it shall be satisfied by way of publication in the Cégközlöny (Company Gazette), unless this Act provides otherwise.

5.1.11. Management of Legal Persons

5.1.11.1. Definition of management, appointment of executive officers

- a. Decisions that are related to the governance of a legal person, and are beyond the competence of the members or founders
- b. In some cases the executive officer have to have a special license to act as the representative of the legal person itself.
- c. be adopted by one or more executive officers or by a body consisting of executive officers.
- d. Executive officers shall perform their management functions representing the legal person's interests.
- e. The first executive officers of a legal person shall be delegated in the legal person's instrument of constitution. After the legal person is established, executive officers are selected, appointed and dismissed by the members of the legal person, or by the founders in the case of non-membership legal persons. The appointment of an executive officer shall take effect when accepted by the person delegated, elected or appointed

5.1.11.2. Requirements for executive officers, grounds for exclusion

- (1) The executive officer must be of legal age and must have full legal capacity in the scope required for discharging his functions.
- (2) If the executive officer is a legal person, that legal person shall designate a natural person to discharge the functions of the executive officer in its name and on its behalf. The rules pertaining to executive officers shall apply to the designated person as well.
- (3) The executive officer shall perform management functions in person.
- (4) Any person who has been sentenced to imprisonment by final verdict for the commission of a crime may not be an executive officer until exonerated from the detrimental consequences of having a criminal record.
- (5) A person may not be an executive officer if he has been prohibited from practicing that profession. Any person who has been prohibited by final court order from practicing a profession may not serve as an executive officer of a legal person that is engaged in the activity indicated in the verdict.

(6) Any person who has been prohibited from holding an executive office may not serve as an executive officer within the time limit specified in the prohibition order

5.1.11.3. Confidentiality and obligation of information

(1) The executive officer is required to keep the members of the legal person, or the founders in the case of non-membership legal persons, informed concerning the legal person, and to provide access for them to the legal person's documents, records and registers. The executive officer shall be entitled to request a written declaration of confidentiality before the provision of information or access.

(2) The executive officer may refuse to give information and to provide access to documents if this would infringe upon the legal person's trade secrets, if the requesting party exercises his in a manner which is abusive, or if he refuses to make a declaration of confidentiality despite having been asked to do so. If the requesting party considers the refusal of information unjustified, he may request the court of registry to order the legal person to provide access to the information

5.2. The family law principles

Protection of the institution of marriage and the family.

In Hungary the institution of marriage and family life is protected by law, especially by the Constitution and the Code of Civil Law.

The provisions of this Act shall be applied with a view to reconciling family life and individual interests. In family law the interests and rights of children merit enhanced protection.

All children have the right to grow up in their own family. If raising a child in his own family is not an option, all possibilities should be explored to find ways for the child to grow up in a family environment and to maintain prior family ties.

The right of children to grow up in their own families, or alternatively in a family setting, and to maintaining prior family ties may be limited in cases defined by law, under exceptional circumstances and in the best interests of the child.

Principle of equality of spouses. In family life and in family affairs spouses shall be considered equals; they shall have equal rights and obligations.

Family relations should be resolved under the principle of fairness and in due consideration of the protection of the party who is considered weaker in standing up for his.

5.3. Questions – Test Your knowledge:

- 1) What rules of the Law of Persons are framed for?
- 2) Tell the basic rules of the foundation of legal persons in Hungary.
- 3) Define the Legal Persons, and the legal capacity of the Legal Persons.
- 4) Define the basic principles of the registration of the legal persons.

- 5) Describe the management of the legal persons.
- 6) Give the rules of the form and value of the form and value of capital contributions.

6. THE SUBJECTS OF THE CIVIL LAW AND THE CONTRACT LAW OF HUNGARY

6.1. The subjects of the contract law

The subjects of the contract can be natural person or a legal person or the state in Hungary.

The natural persons are human beings, who have the widest ranges of rights and obligations according to the Hungarian Law. The rights and obligations are written in the Acts of Hungary, the basic rights and obligations can be found in the Constitution, and the Civil Law code. Other rights and obligations can be found in the Act which rules the legal situation in which the natural person is involved (like in labour law situation the labour Law Code).

According to the Law: All persons shall have legal capacity; all persons shall be entitled to have rights and obligations.

Unilateral statements limiting legal capacity shall be null and void.

6.1.1. Commencement of legal capacity

Each person, if born alive, shall have legal capacity from the day of conception.

The three hundredth day preceding the date of birth shall be considered the day of conception, which, however, may be evidenced to have occurred earlier or later. The day of birth shall be included in the aforementioned period

6.2. The definition of the contract, and basic guidelines of contract law

6.2.1. The definition of the contract

First we should settle the definition of the contract, which is an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration. Since the law of contracts is at the heart of most business dealings, it is one of the three or four most significant areas of legal concern and can involve variations on circumstances and complexities. The existence of a contract requires finding the following factual elements:

- a) an offer;
- b) an acceptance of that offer which results in a meeting of the minds;
- c) a promise to perform;
- d) a valuable consideration (which can be a promise or payment in some form);
- e) a time or event when performance must be made (meet commitments);
- f) terms and conditions for performance, including fulfilling promises;

g) performance.

For a contract there always have to be at least two parties otherwise it is always just a DECLARATION or STATEMENT, when it is written and signed by only one person.

The new Hungarian Contract Law has adopted the Anglo-American notion of “trust” which makes it possible for one or more beneficiaries to own a property that can be transferred to a trustee and together with it new types of contract have been recognized by law. The types of contracts the new Hungarian Contract Law acknowledges are the distribution contract, the franchise contract, the factoring contract, the intermediation contract and the financial lease contract. These types of contracts existed before but they were not acknowledged by the law.

In terms of acknowledges the indefinite term contract, the fixed-term contract and the assignment contract.

6.2.2. *Guidelines of hungarian contract law:*

The principle of freedom of contract states that parties can conclude freely a contract deciding the terms and the content of a contract and impose specific rules. Contracts can be concluded in writing or orally. The Hungarian Contract Law also allows for contracts to be concluded by representatives of both parties if the necessary authorizations have been granted. The parties must work together and provide all relevant information not only during the contract but also throughout the negotiations.

The contract can be framed when there is a mutual and concurrent agreement between the parties.

6.2.2.1. *The freedom of the contract*

There are some special exceptions otherwise in Hungary we have a freedom of the contract. The freedom of the contract have four significant parts:

- the freedom of the will: The Parties decide whether they want to enter into the contract or not
- the freedom of deciding about the other party or parties who they want enter into a contract with
- the freedom of the content of the contract: the parties decide about the content of the contract.
- the freedom of the form of the contract, the parties decide about the form of the contract, which can be a written contract, an oral contract or a behavioral contract
- Exceptions from this principle:
 - utility contract (water, gas electricity)
 - minors
 - just written
 - nothing illegal against the law

In Hungary there are three CONTRACT TYPES:

- written contract,
- oral contract,
- behavioral (implied) contract

6.3. Doctrine of contract

In the course of the economic and the private legal relationships, it is often essential that there is a contractual relationship between the parties concerned. In everyday life, this is one of the most frequently used legal relationship, so it is essential to get to know the general rules of the contract.

Contract is a legal form that regulates financial relations and goods relations, it creates legal relationship between the objects of the contract that forms obligation for completing the subject of the contract and legitimacy for claiming the one.

We call engaged the one who owe some service in the course of the contract to the entitled who can claim the service. At several types of contract – with regard to that the engaged's and the entitled's positions are connected one another – the parties concerned are named differently (for example at marketing: vendor and customer, at enterprise: orderer and entrepreneur, at deposit: investor and receiver).

A one-sided declaration may also give rise to a claim on a service, but only in cases determined by a separate law.

In Hungarian law, contractual relationships are generally characterized by the principle of freedom of contract, except when the contractual obligation is stipulated by a local government decree issued by law, government decree or the authorization of the law. In the case of treaties, the most important general and special rules in Hungary are primarily contained in the Civil Code. The Civil Code structurally divides the rules on contracts into two main parts, one being the General section, which contains general rules on contracts as a whole, while the Special Part relates to the specific types of contracts and their special rules.

6.4. Concept, subject, appearance, forms and contents of the contract

6.4.1. Concept of the contract:

The contract is a joint declaration of two or more persons seeking unanimous and legal effect.

The contractual relationship is established between legally equal partners, the subjects of the contractual relationship are subject to the same rights and obligations, and therefore we can speak of equal partners. In the course of the contract, an agreement is reached between the different persons in their interests, that is, the contract is concluded only if there is a CONCENTRATION between the Parties on the issues of the most important contracts.

6.4.2. The parties to the contract:

As previously in Hungary there is contract freedom, ie the Parties are free to choose who they want to conclude with. The contract always has at least two subject, the contract may be subject to a natural person, a legal person, or a non-legal entity. The subject of the contract must have capacity to act in view of the need for capacity to act to make the declaration of will required for the conclusion of the contract. (of course, we have already explained in the legal section that limited bribes and incapacitated persons may be subject to contracts, but only in cases defined by law, for example, they may be given as donations in a gift contract.)

In the contract, the subjects are generally called and mandated, but depending on the type of contract, the names of the subjects of the contracts may be different (for example, for sale, buyer and seller at the business: buyer and contractor, depositor and creditor). Since the parties have reciprocal services in the Treaties, so the role of the creditor and of the debtor always changes within a contractual relationship.

6.4.3. Object of the contract:

The subject of the contract is the service. A service is the behavior that the claimant may claim from the debtor and with which the debtor belongs to the creditor. In the Treaties, the Parties have mutual services. (so we have previously written that the role of the creditor and debtor always changes in a contractual relationship).

A service that determines the contract for the main service and the related minor services are called ancillary services. The services may be divided (if the shares generated by the share are physically fit independently by the payment service provider), the service may be divided into one (for the purchase of the purchase price), long-term (eg custody of the given item) or periodic return (eg rent in the case of rent) service delivery) or may be indivisible if the service is physically unbundled.

Services may be deferred and free of charge. Due to the principle of pregnancy, the contractual legal relationships usually pay off the service, ie the service is remunerated unless the contract or other circumstances of the contract follow (what lawyers are called the presumption of pregnancy on the basis of the Civil Code). There are free services, this is the most common example is the daily life of the gift agreement (where the donor does not ask for compensation "in exchange for" the gift he gave).

Services can also be grouped by having personalized and traffic services. Most of the traffic type services, ie services other such things can be found in the economic or replaced with other obligations may be fulfilled, rather than a particular service. Personal services may only be performed by the debtor. (Eg: is personal service when a famous pianist put up a lecture evening, then there will need to speak with one voice, it is clear that you can not send him instead to the secretary of the action).

6.4.4. Form of the contract (form) and content:

The contract to be concluded in Hungary under the Civil Code can be in the following forms:

A) verbally orally or in the form of a telephone (telephone, mobile, or e-mail) between the Parties present together or in the form of a contract. The bid to do so must be

immediately accepted by the other party, otherwise the contract will not be concluded.

B) in writing:

- in this case the contract is in written form, there are degrees in the written contract:
- simple written contracts such as the purchase contract in writing by the Parties to the contract of employment or the vehicle (ie there is no need at this time professionals -ügyvéd lawyers, notaries - the assistance provided).
- qualified writing, one of which is a contract concluded by the signing of two witnesses (the witnesses usually only sign the contract) or the contract signed by a lawyer (lawyer or legal counsel) (the most common real estate purchase or contract)
- authentication - This contract is included in the notarial act of a notary public, such as contracts of high economic weight, or

C) or behavioral behavior - contracts with widespread behavior are very common, contracts involving mass-occurring everyday activities are linked to a case-by-case approach, for example when we buy a bus ticket and board the bus, we conclude a contract with the transport company. Civil law, however, does not consider silence as consent, so if one does not say no to a contract offer, his silence must not be considered as consent.

6.4.5. *Content of the contract:*

The contents of the contract shall be deemed to be the provisions of the law for each type of contract (for example, in the case of a real estate purchase contract, the property's land number and address), or all the facts and data that the Parties consider relevant to their legal relationship, and are therefore requested to make a written statement. Given that - as has been repeatedly mentioned in the note - Hungary is freedom of contract, so anything can include in the contract between the parties legally free will. What the points are considered essential to the law does not give a clear answer; they can be filtered from the contents of the particular contract type. You have to agree with the parties on the subject of the contract, ie what the agreement is for. For example, renting a rented property and rent. However, the parties do not have to agree on matters governed by law.

6.5. *Sale contract*

The sales contract is the most common type of contract, so it is first presented in the note. Sale: Transfer of ownership of a thing against money. Under a sales contract, the seller must transfer the property of the thing to the buyer and dispose of the thing in the buyer's possession, and the buyer is obligated to pay the purchase price and take over the thing. A contract of sale may be the subject of all movable and immovable property which is not under the rule of unsalable property.

This makes it appropriate to reflect on the relationship between the Member States' 'domestic' laws and the CESL, and to consider the differences between them. Our laws

of contract are different not only in the terminology and the concepts that they employ, but also in the results they produce. I have suggested before that at least some of these differences are more than the result simply of historical tradition.[3] They reflect different assumptions about the transactions to which each law is likely to apply and, in particular, the differences between the cases that lawmakers (whether legislators, judges or academic proponents of ‘received doctrine’) envisage coming before each system’s courts. They also reflect differing assumptions about the markets in which the transactions are made; differences in philosophy; and different views of the role that the law and the courts should play. In this paper I aim to explore how the CESL, the contract sections of the new Hungarian Code and English law compare in a number of ways, and to consider the relationship between the two national systems and the CESL. For the most part I will discuss only business-to-business (B2B) contracts and I will ignore business-to-consumer (B2C) contracts. This is partly for reasons of space but mainly because of the harmonizing effect of the consumer acquis that is implemented in each of the three systems. This does not result in uniformity, certainly, but as far as B2C contracts are concerned it does reduce the differences between the systems very significantly.

6.6. *General rules of legal competency*

6.6.1. *Legal competency*

Any person whose competency is not limited or precluded under this Act or by a court ruling on guardianship is considered legally competent.

Whosoever is competent is entitled to conclude contracts and make other legal statements.

Unilateral statements limiting legal competency shall be null and void.

6.6.2. *Legal incompetency*

A legal statement made by any person who is not of sound mind and who is therefore unable to make decision for himself or herself at that time shall be considered null and void.

Legal statements, exclusive of testamentary dispositions, made by incompetent persons shall not be considered null and void on the grounds of incompetence, if the contents and circumstances thereof imply that the legal statement would also have been justified had the party been legally competent.

6.6.3. *Limited capacity and legal incompetency of Minors*

6.6.3.1. *Minority*

(1) Persons who have not yet reached the age of eighteen years shall be deemed minors. Married minors are considered to be of legal age.

(2) If the marriage is annulled by court order owing to the lack of capacity or in the absence of the guardian authority's consent where it is required due to minority, adulthood acquired by marriage shall no longer apply.

(3) The dissolution of this marriage shall not affect adulthood acquired by marriage.

6.6.3.2. *Minors of limited legal capacity*

A minor shall be of limited capacity if he or she has reached the age of fourteen years and is not incompetent. Minors of limited legal capacity are between the age of 14 and 18, except if they have the licence to get married in official circumstances, between the age of 16 and 18.

6.6.3.3. *Legal statements of minors of limited capacity*

Unless otherwise provided for by this Act, the legal statements of a minor with limited capacity shall not be deemed valid without the consent of that minor's legal representative. If and when a minor of limited capacity becomes competent, he shall be entitled to make his own decisions concerning the validity of his pending legal statement.

Minors of limited capacity shall, without the involvement of their legal representatives, be entitled:

- a) to make legal statements of a personal nature for which they are authorized by legislation;
- b) to conclude contracts of minor importance aimed at satisfying their everyday needs;
- c) to dispose of the earnings they acquire by gainful employment and undertake commitments up to the extent of their earnings;
- d) to conclude contracts that only offer advantages; and
- e) to give away gifts within reasonable limits.

With the permission of the guardian authority, the legal representative shall be entitled to refuse gifts that are promised or given to a minor of limited capacity. If the guardian authority declines to approve the legal representative's statement of refusal, the guardian authority's such decision shall replace the legal representative's statement of acceptance.

The legal representative shall be entitled to make statements in the name and on behalf of the minor of limited capacity, except when the law requires the statement to be made by the minor with limited capacity himself/herself or when the statement concerns the income the minor of limited capacity has acquired by gainful employment. As regards any statement of a legal representative that effects the person or property of a minor, it shall be made with a view to the opinion of the minor of limited capacity.

6.6.3.4. *Incompetent minors*

Minors under the age of fourteen years are legally incompetent.

6.6.3.5. *Legal statements of incompetent minors*

(1) Legal statements made by incompetent minors shall be null and void; their legal representatives shall proceed on their behalf.

(2) Contracts of minor importance that are generally concluded in large numbers and do not require special consideration / like buying goods from their pocket money/ and that have been concluded and performed directly by incompetent minors shall not be considered null and void on the grounds of incompetence.

(3) As regards any statement made by the legal representative that effects the person or property of the minor, the views of the incompetent minor of sound mind shall be taken into account in accordance with the age and maturity of the child.

6.7. *Questions, test Your knowledge:*

- 1) What are the basic guidelines of Hungarian Contract Law?
- 2) Please give the definition of the Contract.
- 3) Tell the basics of the legal statements of incompetent minors.
- 4) What the freedom of the contract means according to Hungarian Contract law?
- 5) Give the basic details of the content of the contract, and what is forbidden as elements of the contract according to the Law.

7. BUSINESS ASSOCIATIONS

7.1. General Provisions

7.1.1. Definition of business association

(1) Business associations are legal persons established for the pursuit of business operations with financial contribution provided by its members, where each member has a right to a share of the profit and an obligation to participate in covering the losses.

(2) The business association's profits and losses shall be distributed among the members in proportion to their capital contributions. The business association shall be allowed to pay dividends or a share from the net profit for the year or from the retained earnings available. Any clause of the instrument of constitution for the exclusion of any member from the profits or from the bearing of losses shall be null and void.

(3) Each member shall be required to cooperate with other members and the company's organs,

and may not engage in any conduct which seriously endangers the achievement of the company's objectives.

7.2. Company form

(1) A business association may operate in the form of a general partnership, limited partnership, private limited-liability company or limited company.

(2) The corporate name of a business association shall contain the designation of the corporate form or the abbreviation thereof as specified in the Civil Law Code, which is the Act V of 2013.

7.3. Members of the company

(1) A natural person may be a member with unlimited liability in only one business association at any given point in time. A minor may not be a member with unlimited liability in a business association.

(2) A general partnership, limited partnership or sole proprietorship may not be a member with unlimited liability in a business association.

(3) Any person who has been prohibited from practicing a profession may not be a member in a business association, other than a public limited company.

(4) In respect of limited companies, the members are the shareholders.

7.4. Means and time of legal statements

(1) Legal statements pertaining to the company must be made in writing. This provision shall also apply to the company's decisions, and to the delivery of legal statements and decisions to the recipient.

(2) A legal statement relating to the company may be made or delivered by means of electronic communications if so permitted by the company's instrument of constitution, which shall provide for the relevant conditions and the means thereof.

(3) Where a legal statement relating to the business association is mandatory, or where certain action is required, it shall be made or carried out without delay.

(4) Where a legal statement made in writing has been sent by way of post, it shall be considered and received

- if sent to a resident recipient
- at the point in time indicated on the notice of receipt, and in the case of registered mail on the fifth working day following dispatch, in the absence of proof to the contrary.

7.5. Arbitration procedure

(1) In accordance with the instrument of constitution or under an agreement between the parties concerned, any dispute in the area of company law shall be settled by way of binding arbitration.

(2) Corporate dispute shall mean:

a) any dispute arising out of or in connection with the corporate relationship between the business association and its members, including former members, covering also the judicial review of decisions of company bodies;

b) any dispute between members in connection with their corporate relationship; and

c) any dispute between the business association and its executive officers or supervisory board members, arising out of or in connection with their office

7.6. Foundation of Business Associations

7.6.1. Instrument of Constitution of Business Associations

The memorandum of association of a company shall also function as its instrument of constitution, with the exception of limited companies and single

- member private limited
- liability

companies. The articles of association of a limited company and the charter document of a single

- member private limited
- liability companies shall serve as its instrument of constitution.

7.6.2. Formal requirements of instruments of constitution

- (1) The instrument of constitution shall be signed by all founder members. The memorandum of association may be signed on behalf of a member by his representative holding an authorization fixed in an authentic instrument or in a private document representing conclusive evidence.
- (2) The instrument of constitution shall be drawn up in a notarial document, or in a private document countersigned by a lawyer or the legal counsel of a founder.

7.6.3. Place of operation

- (1) If a company's registered office and head office of central administration are not the same, the office of central administration shall be indicated in the instrument of constitution as well.
- (2) The company's place of business and branch shall be indicated in the instrument of constitution, if the company requests the registration thereof.

7.6.4. Provisions relating to the scope of activities of the company

- (1) Where authorization by the competent authority is prescribed mandatory by law to engage in a certain economic activity, the company may take up the pursuit of such activity in possession of such authorization.
- (2) A business association may engage in the pursuit of an activity that is rendered conditional upon specific qualifications by law, if the company's member bound by personal involvement, or at least one person employed by the company under contract of employment or any other form of civil employment relationship is able to satisfy such qualification requirements.

7.6.5. Non-compliance with the obligation of capital contribution

- (1) If a member fails to provide his contribution as undertaken in the instrument of constitution by the prescribed time limit, management shall call upon such member, with the applicable consequences indicated, to provide the contribution within thirty days.
- (2) In the event of non-compliance within the thirty day time limit, the membership of the member who failed to provide the capital contribution shall be terminated on the day following the expiration of such time limit. Management shall notify the former member of the termination of his membership. The former member shall be held liable for damages caused to the business association by virtue of his failure to provide the contribution in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.
- (3) Any provision of the instrument of constitution which provides more lenient sanctions than what is prescribed in the Civil Law Code upon members for failure to provide the capital contribution

7.6.6. *Key Issues and Dimensions*

In terms of results (and in fact also in terms of terminology and concepts) the three laws have a great deal in common. In many situations the legal outcome will be substantially the same whichever law is applicable. But there are a number of key issues on which there are substantial differences. Moreover, the laws seem to differ in a number of key dimensions. I have selected four to discuss. These are:

- (1) assumptions about the relevant market;
- (2) individualism – the extent to which parties are free to pursue their own goals at the expense of the other party and, conversely, are expected to look after their own interests;
- (3) the amount of discretion left to judges through leaving them to apply general standards rather than detailed rules; and
- (4) the extent to which the judge is expected to interpret the contract, and so fashion the parties' obligations, to the particular context of the transaction.

My aim is not to criticize any of the laws, nor even to evaluate them in terms of criteria such as justice or efficiency, but, taking each dimension in turn, merely to see what position each law appears to occupy along the relevant spectrum. This is a speculative venture, in the sense that in order to work out the underlying assumptions, we often have to carry out 'reverse engineering' – in other words, to work backwards from the relevant provisions. This is because the policies and assumptions are not always stated. This is certainly true in a case-law system like English law, as not all judges articulate their reasons and different judges may give different reasons for the same rule. But it is also true for the CESL, where the Group of Experts and the EU Commission sometimes gave their reasons but at other times did not. In the case of the Hungarian Civil Code (HCC) the relevant documents may exist but I have not managed to find them in English. So I hope I will be forgiven for guessing; and I hope that readers will be willing to tell me where I go wrong, as undoubtedly I will have done. In the case of the HCC there is the additional complication that I do not know how the provisions are supposed to be or are likely to be applied.

7.6.7. *Good Faith and Fair Dealing*

A good example of the difficulties in knowing how a provision is to be interpreted and applied comes right at the start of the HCC § 1:3 provides:

7.6.7.1. *Principle of good faith and fair dealing*

- (1) In exercising rights and in fulfilling obligations the requirements of good faith and fair dealing shall be observed.
- (2) The requirements of good faith and fair dealing shall be considered breached where a party's exercise of rights is contradictory to his previous actions which the other party had reason to rely on.

Obviously any English lawyer is going to have difficulty in applying a concept that is largely unknown to English law, but even those systems that recognize the concept of good faith appear to apply it rather differently. In German law, for example, § 242 BGB seems largely to have been used to enable the judges to create new doctrines to fill gaps in the Civil Code: ‘there is something in this rich case law that reminds one of English case law techniques. The CESL, by contrast, contains a separate article (Article 4) authorizing judges to develop rules to solve issues that are within the scope of application of the CESL but which are not expressly settled by it.

The CESL also imposes a general duty of good faith. On the face of it, the CESL provision seems very similar to § 1:3:

7.6.7.2. *Article 2 Good faith and fair dealing*

- (1) Each party has a duty to act in accordance with good faith and fair dealing.
- (2) Breach of this duty may preclude the party in breach from exercising or relying on a right, remedy or defence which that party would otherwise have, or may make the party liable for any loss thereby caused to the other party.
- (3) The parties may not exclude the application of this Article or derogate from or vary its effects.

However, Article 2 is intended to have a limited role. Recital 31 states:

The principle of good faith and fair dealing should provide guidance on the way parties have to cooperate. As some rules constitute specific manifestations of the general principle of good faith and fair dealing, they should take precedent over the general principle. The general principle should therefore not be used as a tool to amend the specific rights and obligations of parties as set out in the specific rules [...]

Under the CESL the principal role of good faith and fair dealing may be a limited one, namely to prevent a party acting inconsistently. It may also be employed to prevent an abuse of right. The HCC provision seems to have a wider purpose. Inconsistent behaviour is explicitly prevented by § 1:3(2) and there is a separate provision prohibiting any abuse of rights.[11] That suggests that § 1:3 is to apply more broadly. Later I will argue that one or other of these provisions seems to be regarded as a general restriction.

7.6.8. *A Fully Developed Market?*

The first ‘dimension’ I would like to discuss is the extent to which each law assumes that most of the transactions to which it will apply take place in a well-developed market. The English law on remedies for breach of contract, for example, seems to assume that there is almost always a ready market in which a buyer can obtain substitute goods if the seller delivers non-conforming goods or does not deliver at all. Thus specific performance is almost never awarded in a sale of goods case. Instead the buyer is expected to terminate the contract, go into the market to obtain replacement goods and claim any extra costs in an action for damages. The CESL, in contrast,

allows the buyer to require performance unless to require performance would be disproportionate.

7.6.8.1. Requiring performance of seller's obligations

- (1) The buyer is entitled to require performance of the seller's obligations.
- (2) The performance which may be required includes the remedying free of charge of a performance which is not in conformity with the contract.
- (3) Performance cannot be required where:
 - (a) performance would be impossible or has become unlawful; or
 - (b) the burden or expense of performance would be disproportionate to the benefit that the buyer would obtain.

Likewise the expectation of the CESL seems to be that a seller whose buyer no longer wants the goods will normally find another buyer for the goods.

7.6.8.2. Requiring performance of buyer's obligations

- (1) The seller is entitled to recover payment of the price when it is due, and to require performance of any other obligation undertaken by the buyer.
- (2) Where the buyer has not yet taken over the goods or the digital content and it is clear that the buyer will be unwilling to receive performance, the seller may nonetheless require the buyer to take delivery, and may recover the price, unless the seller could have made a reasonable substitute transaction without significant effort or expense.

7.7. The Limited Liability Company

7.7.1. Company

The LLC must select a company name which is not similar to any other legal entity's name in Hungary. Every LLC name must end with the abbreviation "Kft."

7.7.2. Registration

There are two ways to register a LLC in Hungary with the Court of Registration:

1. Online: This is the fastest method for registration. However, either an attorney or notary must countersign the Deed of Association and the application. An attorney is required during the entire registration process. The Hungary Companies Act provides a standard charter document which can be copied and filled in for faster registration online. Registration can be completed in one business day online.
2. The General Application: When the shareholders decide to use their own terms and conditions in the Deed of Association. This type of registration may take up to one week for approval.

7.7.3. Limited Liability

Members liabilities (can be also single member company) to the company extends only to their capital contributions (quotas). Members are not personally liable for the company's liabilities and debts.

7.7.4. *Members*

A LLC may have one or more members (quota holders), which includes both foreign natural persons and foreign legal entities. Hungarian LLC's label their shareholders as "members". They are actually quota holders by owning a "quota" of the company's total share. The Deed of Association should specify all the rights and privileges of the members including voting rights. By law, profits cannot be distributed to members until all capital contributions have been paid in full.

7.7.5. *Management*

LLC's do not have a Board of Directors. Management is performed by one or more managing directors.

At least one managing director must be appointed (who can be a member) who does not have to be a Hungarian resident. In addition, a legal entity can be the managing director of the company. The managing director(s) administer the company's daily affairs. The Deed of Association will specify the managing director(s) duties and obligations. Managing directors must keep records of all financial matters and meeting minutes and adopted resolutions. Under the Companies Act, managing directors are considered executive officers of the LLC.

The managing directors may only be removed by a resolution supported by at least 75% of the members.

Company Manager: The Companies Act also provides for the appointment of a company manager. The managing director oversees and manages the company manager who is regarded as an employee for the company. The law allows the company manager to represent the company before third parties and the government including signing documents on the company's behalf. However, the Deed of Association can limit the responsibilities for the company manager such as signature rights on behalf of the company.

7.8. *Questions –Test Your knowledge:*

- 1) Give the definition of business associations in Hungary.
- 2) In what forms, can You establish business associations in Hungary?
- 3) Who can be the member of Business associations in Hungary?
- 4) In what forms can You establish business associations in Your home country?
- 5) What is the definition of the limited liability company in Hungary?
- 6) Who can be in the management of the the business associations according to the Law?

Figures

LITERATURE

Literature is listed in alphabetical order

In-text references are in italics. References are in accordance with the requirements of scientific publications.

Sample:

Book:

GALÁNTAI Aurél, JENEY András: *Numerikus módszerek*. Miskolc: Miskolci Egyetemi Kiadó, 1998. -ISBN 963 661 3117

Book chapter:

Author of the chapter: *Title of the Chapter* In: GALÁNTAI Aurél, JENEY András: *Numerikus módszerek*. Miskolc: Miskolci Egyetemi Kiadó, 1998. ISBN 963 661 3117. pp. 71-73.

Journal:

GAÁL Zoltán, SZABÓ Lajos, DANCSE CZ Gabriella: *Karbantartási projektek menedzselésének stratégiai és operatív kérdései*. In: Magyar Grafika, 2004., III.vol. 7. no. pp. 48-50.

Website:

Author, *title*, *subtitle*, publication details (publisher, institute, if relevant), link, Retrieved: date (day/month/year)

