

Parte I
Dottrina

MICHELA CAVALLARO, Le stagioni del dovere di contribuzione» 483

Abstract. Fifty years after the reform of the Italian family law, this essay focuses on the duty of spouses to contribute to the needs of the family, enshrined in art. 143, paragraph 3, of the Italian Civil Code, which governs its extent and methods of compliance.

After analyzing the original rationale of the institute, the Author investigates most recent developments and the interaction with the duty of child support. It is worth noting that in recent decades the attention of interpreters has shifted from spouses to the “best interest of the child”. The Author examines art. 145, paragraph 3, of the Italian Civil Code, introduced on the occasion of the establishment of the Court for persons, for minors and for families, which regulates the specific remedy in the event of non-fulfilment of the contribution obligation, attributing to “anyone with an interest” the legitimacy to act.

GENNARO DI MARTINO, La rilevanza della convivenza prematrimoniale nella quantificazione dell’assegno divorzile: la parola alle Sezioni Unite.....» 497

Abstract. Supreme Court of Cassation has to decide whether the period of premarital cohabitation should be given relevance for quantifying the divorce allowance. Although the law treats about “duration of marriage”, one wonders whether this formula can be interpreted extensively to include premarital cohabitation. The issue becomes more complex with regard to same-sex couples, since for them, until 2016, “more uxorio” cohabitation was not the result of a free choice, but was imposed by the system due to the absence of regulation of civil unions.

GIUSEPPE MARIA MARSICO, Sul patto di famiglia: tra autonomia privata e parziale deroga alla disciplina dei patti successori, in un’ottica di continuità di impresa.....» 511

Abstract. Family pact is placed in the context of succession pacts not so much because with it certain assets of the entrepreneur are transferred in a spirit of generosity before the opening of the succession in view of the generational passage in the management of the company, but because, alongside to this attribution, the law necessarily provides for the satisfaction of non-assigned heirs, through the liquidation of an adjustment (also in kind) by the beneficiary of the attribution, anticipating the effects of the opening of the succession between heirs and also of the hereditary division, limited to the assets being transferred, taking into account the legitimized shares, and reinforcing the finality of all attributions with the exclusion from collation and reduction that characterizes the family pact, and distinguishes it from any donation having as object the same assets, is the necessary presence of the adjustment in favor of the other legitimized, collectable immediately, without having to wait for the opening of the succession, which is characterized by the impossibility of subjecting the attributions thus made to collation and reduction.

FABIANA D’AVINO, Eredità digitale e tutela dei dati personali *post mortem*» 547

Abstract. The digital revolution requires a rethinking of existing juridical categories, or an adaptation of the same to the explanation of current phenomenology.

Among the various implications of the technological revolution, there is the creation of a new category of assets: the digital ones. It involves a new configuration (rectius composition) of individual heritage.

Focusing on the destiny of this digital heritage at the time of the opening of the succession, how does it work? Given the traditional configuration of individual heritage as a set of material assets, what are the differences between the intergenerational transfer of the intangible digital asset and the non-digital one?

Parte II
Giurisprudenza

FILIPPO RIZZI, Trust e tutela dei legittimari: brevi riflessioni su una recente pronuncia della Corte di Cassazione (nota a Cass. civ., sez. II, ord. 17 febbraio 2023, n. 5073)» 561

Abstract. In an inter vivos discretionary trust with post-mortem effects, the protection of forced rights of the beneficiaries against the trust is ensured not by the non-recognition of trust – as a consequence of its nullity pursuant to Article 13 of the Hague Convention of 1st July 1985, made enforceable in Italy by law no. 364 of 1989 – but by the reduction action, the beneficiaries of which must be identified in the beneficiaries of trust, where the trustee has already implemented the settlor’s will carrying out the relevant asset dispositions (or when the beneficiaries themselves can be identified with certainty), or in the trustee in the different hypothesis where trust has not yet been implemented (as well as in the so-called purpose trust, where there is no specific identification of the beneficiaries).

GIANCARLO TANTILLO, Aspetti formali della revoca della rinuncia all’eredità (nota a Cass. civ., sez. II, 28 dicembre 2022, n. 37927» 583

Abstract. This study analyses the dogmatic elaboration of doctrine and jurisprudence about the revocation of the waiver of inheritance, focusing primarily on the systemic repercussions arising from the most recent judgments.

In particular, the Italian Supreme Court of Cassation, with the decision no. 37927/2022, in continuity with an already established interpretation, has affirmed that the revocation of the waiver of inheritance must necessarily have the form of public deed or private authenticated deed, and must consequently be transcribed at the Register of successions held at the Courts’ clerk offices, thus implicitly assigning, de facto, a new role to the said offices, despite the absence of any positive norm.

GIULIA CAMILLETI, Vittimizzazione secondaria: inappropriata valutazione del rischio, inattendibilità della “PAS” e operatività dello stereotipo di genere (nota a Corte EDU, sez. I, 10 novembre 2022 - ric. n. 25426/20 - causa *I.M. e altri c. Italia*)» 605

Abstract. The case concerned the allegation by the applicants, a mother and her two children, that the Italian State had failed in its duty to protect and assist them during contact sessions with the children’s father, a drug addict and alcoholic accused of ill-treatment and threatening behaviour during the sessions. The Court found that the sessions had upset the children’s psychological and emotional balance, as they had been obliged to meet their father in an environment where their protection was not guaranteed. Their best interest in not being compelled to take part in sessions held in such conditions had thus been disregarded.

The case also related to the decision of the domestic courts to suspend the mother’s parental responsibility. The courts regarded her as a parent who was “hostile to contact with the children’s father”, on the grounds that she had refused to take part in the sessions, citing a history of domestic violence and safety concerns.