English version:

Call for Papers
The Hazard

The concept of hazard having the aim of protecting against the unforeseen, it is very logically in terms of insurance that we first see it emerge in the legal field. Thus, the first attempt to limit the risk appears in French law with the bottomry in the Middle Ages. Likewise, Common Law, with the case law Carter v. Boehm of 1766\(^1\) focusing on the notion of good faith in terms of contracts, links the hazard with the insurance contract.

Nevertheless, the definition of hazard is not limited to business law. The French jurist G. Cornu\(^2\) states that « element of chance, of uncertainty which introduces, into the economy of an operation, a chance of gain or loss for those concerned {...} is of the essence of certain contracts ». Thus encompassing both the random contract defined by article 1108 of the civil code « when the parties agree to make the effects of the contract, as regards the advantages and losses which will result from it, depend on an uncertain event » that the commutative contract, though supposed to be little subject to hazards\(^3\). An accidental element can occur in this type of contract without systematically calling into question the commutative nature of the contract. Caton, taken over by Pompon l\'Ius (D., XVIII,I, 8) didn't he consider that the sale of an object was nothing other than a « buying of the hazard »?

However, limiting the hazard to a purely contractual vision would lead to the exclusion of many legal fields which are nevertheless concerned. Thus, institutional law, unless considering J.-J. Rousseau's social contract, as a real contract, would be excluded from it even though it is directly concerned by the desire to guard against the hazard. The example of the Roman Republic perfectly illustrates this link by its state of emergency system which allows the appointment of a dictator\(^4\) to handle a crisis, a hazard threatening the institutions of the Republic. The principle of choosing a man to deal with the risks and restore the institutional order will cross the ages. Thus, the Constitution of the Fifth French Republic can grant by its article 16, full powers to the head of the executive in order to manage a crisis that could threaten the institutions of the Republic. This constancy of the hazard through the ages is also found in other less visible laws, such as medical law, which is linked to this notion by the therapeutic hazard. The problem is already present under the Old Regime and multiplies with the medical experiments that take place from the 18th century.

\(A\ contrario\), some legal fields reject any reference to hazard, such as the law of war. Thus, the modern authors of jus gentium abandon the idea of subjecting war to chance (namely the drawing of lots) that Grotius had admitted in a few cases ('sortis aleae subiici belli exitus licite non semper potest', De iure belli ac pacis, III.20.42)\(^5\). Other fields which traditionally refuse the hazard, such as the climatic and environmental fields are beginning to accept this notion. None of the rules laid down to try to circumscribe the hazard is enough to

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\(^2\) G. Cornu, Vocabulaire juridique, Association Henri Capitant, Paris, Presses Universitaires de France, 7\(^e\) édition, 2005, p. 46


prove that Mallarmé was wrong. Him who wrote that a throw of the dice had never abolish chance. This is undoubtedly the reason why the concept is the subject of new legal work permanently in positive law. One of the common points of these works is to make the management of the hazard depend on its form: is it mere chance or risk, is risk a negative or a positive thing?

A study day of PhD students at the Center d'Histoire Judiciaire de Lille, will be held on March 24, 2023, aims to conduct a legal and historical reflection on the contours of the notion of hazard, around oral presentation of a duration of 15 min in French or in English. Paper proposals, which are mainly aimed at doctoral students and young researchers, will be sent before Thursday, December 15, 2022 midnight to the following email address: doctorantchj@gmail.com. The text will be written in Times New Roman font of size 12 with a line spacing of 1.5 and must not exceed 4,000 characters (including spaces). PDF format is preferred. Communications must be in French or English.

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