

Parte I Dottrina

MARIA NOVELLA BUGETTI, Limiti alla negozialità del diritto al mantenimento dei figli.....» 135

Abstract. The author, starting from the framework of the limits to parental autonomy in the context of marital crisis, dwells specifically on the limits placed on the negotiation of the right to child maintenance, reviewing some of the most controversial profiles returned by recent case law of the Cassation Court.

MASSIMO SARACENO, Il ruolo del notaio in materia di arbitrato familiare» 149

Abstract. The present contribution, starting from the process of de-jurisdictionalization of family crises, aims to investigate whether, in addition to the new negotiated models for resolving crises, such as assisted negotiation and the declaration made before the civil registrar, there is also room for resorting to arbitration for the resolution of family disputes, causally or occasionally connected to the crisis. Within the limits of the availability of rights and interests underlying family disputes, the possible areas of relevance of the arbitration agreement are identified, anchored to purely patrimonial issues that may arise between spouses during the marriage, but more generally in conjunction with separation or divorce. In this perspective, the role of the notary is emphasized, who on the one hand can direct the parties towards the conclusion of arbitration clauses in their acts, carried out by the spouses during the marriage (for example, in marital agreements), and on the other hand can also be the custodian of the arbitral award for the purpose of transcription in the land registers.

ROBERTA BENDINELLI, Il testatore fragile.....» 195

Abstract. The paper concerns the possibility that the testator finds himself (or herself) in a state of vulnerability. This case will be examined with reference to the following legal provisions: Articles 591 and 624 of the Italian Civil Code. The first one concerns the lack of testamentary capacity, whilst the second one is referred to the possible vices in the testator's consent, including the hypothesis in which fraud was applied (bearing in mind that, when the use of fraud affects the process of drafting a testament, the proper Italian term appears to be "captazione" rather than the generic "dolo"). Furthermore, the analysis carried out will focus on two cases of vulnerability: the state of fragility that could derive from functional illiteracy and the one caused, in certain circumstances, by old age.

RITA LA MANNA, Maternità surrogata: tra inerzia legislativa e incertezze giurisprudenziali» 235

Abstract. Surrogacy is gaining increasing space in the work of Italian jurisprudence. In particular, the problem of the recognition of the status filiationis (status of child) in the case of surrogate motherhood has returned to the centre of attention of the Courts, raising questions that are already familiar to the pre-trial debate and highlighting with increasing insistence the need for legislative intervention. Through the analysis of the most recent judgments of the Courts of Brescia, Milan and Padua, this paper seeks to highlight the 'fragmentary' nature that characterises the jurisprudence of merit, which is split not only geographically - in the absence of a single legislative framework - but also on a purely legal, ethical and moral level.

Parte II Giurisprudenza

ANGELO D'ONOFRIO, Suggestione, captazione e fragilità del testatore
(nota a Trib. Monza, sez. IV, 15 febbraio 2023, n. 366).....» 261

Abstract. The paper discusses one of the first judgments that applied the point of law established by Supreme Cass. Civ. no. 30424/2022 regarding the evaluation of testamentary captation to the detriment of the vulnerable testator. On the basis of this case law, it is proposed that suggestion and captation should be considered as forms of testamentary "dolos" that diverge in quality from "dolos" by deception. In addition, it is pointed out that the difference between unlawful testamentary captation and lawful captation of testator's goodwill can be based on the enhancement of the testator's possible fragility.