MARINA OPERATOR BERTHING CONTRACTS FROM A COMPARATIVE LAW PERSPECTIVE *, **

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ABSTRACT

This paper deals with the concept of marina operator berthing contracts from the comparative perspectives of Spanish, Italian, Croatian and US law. The focus is on the legal nature of the contracts and on the marina operator’s liability arising from them. The authors analyse the relevant legal framework, private regulation, judicial practice and legal doctrine, and discuss the salient features of the contracts and the most prominent issues arising in relation to their practical application. A comparative law analysis shows the similarity of the questions raised in the judicial practice and legal doctrine in all four observed jurisdictions. The discussion revolves around the central problem of determining the legal nature of this innominate atypical contract. The positions are divided into two main lines of argument: one treats the contract primarily as a contract for the use of a safe berth (locatio conductio rei), while the other is based on the concept that the contract contains vital elements of a contract of deposit (depositum), whereby the vessel is entrusted to the marina for safekeeping.

Keywords: marina operator, berthing contract, liability.

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