

Fait ou acte juridique?

Mlle V. et M. S. vivent ensemble depuis plusieurs années. Ils ont eu un enfant.

Fait juridique

M. S. est allé à la mairie déclarer l'enfant et par la même le reconnaître.

Acte juridique

M. F. a vendu son véhicule à M. Y. Après avoir pris possession du véhicule M. Y n'a pas payé M. F.

Acte juridique

Leacutetat Entre Fait Et Droit

Nicolas Cornu-Thénard



Leacutetat Entre Fait Et Droit:

La notion de fait dans la jurisprudence classique Nicolas Cornu-Thénard, 2011 Telle qu'elle est connue l'origine par les juriconsultes romains la distinction entre fait et droit a une fonction méthodologique Elle oppose pour l'essentiel deux types d'enquêtes dont peut dépendre la résolution d'un conflit en justice L'une a une portée générale la quaestio iuris l'autre ne regarde que la seule espèce en cause la quaestio facti Les juristes apprécient suivant chaque situation envisagée celle des deux approches qui résoudra le litige de la manière la plus convaincante Leurs réflexions sont conditionnées cet égard par les difficultés que suscite l'interpretatio facti Le risque de dissoudre l'expression du ius dans l'extraordinaire disparaît des faits incite parfois privilégier des raisonnements de portée générale La démarche se caractérise alors par son caractère artificiel le fait envisagé est dans cette hypothèse le fruit d'une construction Par un effort de définition chaque circonstance est réduite en une notion générale avant d'être confrontée à la règle de droit La qualification est alors proprement juridique elle permet de résoudre le conflit dans le cadre d'une quaestio iuris Cependant certaines situations concrètes par leur singularité rendent de tels raisonnements inadaptés Aussi une autre approche est elle parfois privilégiée Elle suppose d'étendre les pouvoirs de l'interprète en lui permettant d'apprécier chaque circonstance en cause dans le cadre d'un examen d'espèce La qualification procède alors d'une quaestio facti Cette démarche caractérise la protection pratorienne de la possession elle inspire surtout en substance la concession des actions in factum

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