



Le mandat en question (French Edition)

Benjamin Remy

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Le mandat est, aujourd'hui, un rouage essentiel de la vie juridique et économique. Instrument privilégié pour le fonctionnement des groupements – qu'ils aient ou non la personnalité juridique –, il est également le contrat le plus souvent utilisé par les intermédiaires dont le rôle ne cesse de croître dans notre société de services. Il intervient en outre dans la plupart des montages juridiques complexes. Cette mutation d'un contrat à l'origine conçu comme un « service d'ami » en une prestation de service à titre onéreux assurée par un professionnel s'est traduite par un renversement de la perspective, dont la portée n'est pas toujours claire en droit positif.

Cet ouvrage se propose tout d'abord de dissiper certains faux semblants, certaines ambiguïtés, certaines controverses relatifs aux critères du contrat de mandat afin de réduire les incertitudes que connaît aujourd'hui la pratique. À cette fin, les principaux critères de qualification proposés par la doctrine pour caractériser le contrat de mandat mais aussi l'opération même de qualification, seront approfondis et critiqués.

Il s'agit ensuite de dégager les implications exactes en termes de régime de l'opposition entre mandat à titre gratuit et mandat à titre onéreux en prenant plusieurs points précis du régime et en comparant les solutions retenues pour chacun de ces points selon que l'on est en présence d'un mandat ressortant à l'ordre marchand ou à l'ordre non marchand.

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