General Clauses And Standards In European Contract Law Comparative Law Ec Law And Contract Law Codification

#European Contract Law #Comparative Contract Law #EC Law Principles #Contract Law Codification #General Contract Clauses

This comprehensive resource explores the general clauses and standards foundational to European contract law. It offers a critical examination through the lens of comparative legal analysis and specific contributions of EC law, highlighting ongoing efforts in contract law codification across the continent. This deep dive is essential for understanding the evolving contractual frameworks within Europe.

General Clauses and Standards in European Contract Law

General clauses or standards (Generalklauseln, clauses generales) are legal rules which are not precisely formulated, terms and concepts which in fact do not even have a clear core. They are often applied in varying degrees in various legal systems to a rather wide range of contract cases when certain issues arise issues such as abuse of rights, unfairness, good faith, fairness of duty or loyalty or honesty, duty of care, and other such contract terms not lending themselves readily to clear or permanent definition. Here for the first time is a systematic discussion of this kind of rule in the evolving and dynamic context of European contract law. A collection of twelve insightful essays by leading European law authorities, the book is based on a conference organized jointly by the Society of European Contract Law (SECOLA) and l'association Henri Capitant, held in the `grande salle' of the French Supreme Court in Paris in 2005. The subject is approached along three distinct but interconnected avenues: comparative contract law, in which the different models to be found among Member States particularly the Germanic, French, and English common law systems are explored with an eye to differences and common ground;EC contract law, in which the general clause approach has tended to focus on labour law and consumer law, and in which the European Court of Justice more and more assumes the final say; andthe European codification dimension, in which a potential instrument on the European level would compete with national laws and develop closely with them. The authors demonstrate that a focus on general clauses in contract law, embracing as it does a wide range of types of contracts, helps enormously with the necessary integration of legal scholarship and economic approaches, and of legal science and legal practice in the field. Numerous analytic references to relevant cases and EC Directives give a practical impetus to the far-reaching but immediately applicable

theory presented in this important book. As European contract law continues to develop rapidly, this seminal contribution is sure to increase in value and usefulness.

The Architecture of European Codes and Contract Law

The nineteen outstanding contributors to this deeply insightful book concur in envisioning a fundamentally new systematic concept of contract law that, while preserving the essential and‘architectureand’ of the existing European codes, would nonetheless find cogent ways to integrate such modern developments as mass transactions, chains and networks of contracts, regulation of markets and contracts to protect consumers, and service and long-term contracts into an optional European code. The book is organised along three major avenues: and• the systematic arrangement of a contract law code - how it deals with core questions of formation and performance or breach of contract, such as mistake and misrepresentation, standard contract terms, and remedies in the case of breach of contract; and• the apparent necessity to merge consumer contract law (i.e. such issues as product safety and liability, warranties, and consumer debt and insolvency) with traditional core contract law concepts; and and• the importance to substantive contract law of the pre-contractual phase, in which information duties are becoming steadily more paramount. The authors perspectives cover a wide range of jurisdictions, including new EU Member States. The bookand’s commitment to an integration of comparative law, EC law, and the debate on European codification offers practitioners and academics fertile ground for the development of a new model of contract law that is more than a common denominator of what has been in force so far. This model may serve as a basis for Europe-wide and perhaps even worldwide discussion.

Commentaries on European Contract Laws

The book provides rule-by-rule commentaries on European contract law (general contract law, consumer contract law, the law of sale and related services), dealing with its modern manifestations as well as its historical and comparative foundations. After the collapse of the European Commission's plans to codify European contract law it is timely to reflect on what has been achieved over the past three to four decades, and for an assessment of the current situation. In particular, the production of a bewildering number of reference texts has contributed to a complex picture of European contract laws rather than a European contract law. The present book adopts a broad perspective and an integrative approach. All relevant reference texts (from the CISG to the Draft Common European Sales Law) are critically examined and compared with each other. As far as the acquis commun (ie the traditional private law as laid down in the national codifications) is concerned, the Principles of European Contract Law have been chosen as a point of departure. The rules contained in that document have, however, been complemented with some chapters, sections, and individual provisions drawn from other sources, primarily in order to account for the quickly growing acquis communautaire in the field of consumer contract law. In addition, the book ties the discussion concerning the reference texts back to the pertinent historical and comparative background; and it thus investigates whether, and to what extent, these texts can be taken to be genuinely European in nature, ie to constitute a manifestation of a common core of European contract law. Where this is not the case, the question is asked whether, and for what reasons, they should be seen as points of departure for the further development of European contract law.

European Contract Law

The Association Henri Capitant des Amis de la Culture Juridique Française and the Société de législation comparée joined the academic network on European Contract Law in 2005 to work on the elaboration of a "common terminology" and on "guiding principles" as well as to propose a revised version of the Principles of European Contract Law (PECL). The results of this work were sent to the European Commission and have already been published in French. The English translation is now being published by sellier.elp. This work could contribute to the wider European project. The part on the guiding principles could be a component of the CFR, in the form of "black letter" model rules or recitals. The part on terminology is, in itself, useful for the elaboration of the final various linguistic versions of the CFR. It finds its place within the materials which will accompany the model rules. Last but by no means least, the revised version of the PECL should be considered by the European institutions as an alternative set of model rules on contract law.

Principles of European Contract Law and Italian Law

To provide valuable legal service to persons in today's Europe, practitioners must be conversant in both national and transnational law. At the European level, the Principles of European Contract Law (PECL) are an increasingly important element of contract law, together with national contract law, as contained in Civil Codes and various national statute. Accordingly, Kluwer Law International has initiated a series of volumes, under the direction of prof. Hondius of the University of Utrecht, comparing PECL with the most important European legal systems. This volume on Italian law is the second in the series. Using a straightforward comparative method, the editors¿ analysis not only reveals a significant area of convergence between the PECL and Italian contract law, but also highlights the main differences between the two bodies of rules. The reasons for these differences, both legal and non-legal (such as historical, social, economic), are clearly set forth. The book provides complete texts, with annotations, of the PECL and the corresponding Italian rules. The presentation proceeds as follows: general provisions (scope of application, general duties, terminology)formation of contracts (general provisions, offer and acceptance, liability for negotiations)authority of agents (general provisions, direct and indirect representation)validityinterpretationcontents and effectsperformancenon-performance and remedies in generalparticular remedies for non-performance (right to performance, withholding performance, termination of the contract, price reduction, damages and interest) The editors commentary includes extensive reference to case law and legal doctrine at all essential points. In this way they provide a comprehensive description of the law in action as well as its evolving trends. In addition, incisive essays by two leading experts in the field of comparative law, prof. Rodolfo Sacco and prof. Michael Joachim Bonell, analyse the relationship of the PECL and Italian law and its wider framework in the harmonisation of private law at the European and international levels. The book is a valuable handbook and guide for both foreign and Italian lawyers. For non-Italian lawyers, be they practitioners or academics, it provides a concise but complete and up-to-date outline of current Italian contract law, organized on the basis of a system (PECL) with which many European lawyers are familiar. For Italian lawyers, it offers a clearer insight into a wider European legal contract system whose importance in the evolution of a common European private law is growing rapidly. Principles of European Contract Law Series 2

Fundamental Rights in European Contract Law

Our modern insistence on democratic social values has engendered an intense debate over the intersection of fundamental rights and contract law. In particular, case law in several European national jurisdictions has exerted significant pressure on traditional contract law instruments to conform more transparently with the fundamental rights enshrined in the EC Charter. This pressure is clearly evident in a number of societal areas subject to contract law, among them employment, housing, and privacy. It can even be argued, as this author does, that fundamental rights intermediate between politics and law. Taking its cue from many initiatives toward the development of a more coherent, even harmonised, European contract law, this book is the first major study to examine the following essential questions with detailed reference to actual judicial developments: • To what extent do fundamental rights affect contract law? • In which types of cases can fundamental rights be applied? • What does the explicit consideration of fundamental rights add to contract law adjudication? The author approaches the analysis along two different avenues: first, a comparative overview of developments in case law, and second, a more general theoretical view on the interaction between fundamental rights and rules of contract law which is tested against examples from various legal systems. The focus throughout is on developments in case law, because the impact of fundamental rights in contract law has been felt on the level of dispute resolution rather than on the level of legislation. Germany and the Netherlands are chosen because their judiciaries have been notable for their early and continuing attention to the theme, and England and Italy for perspectives on developments under common law and civil law systems respectively.

Constitutional Values and European Contract Law

Two major developments in European Private and European Business Law come together when we speak about "Constitutional Values and European Contract Law". European Contract Law has become extreme¬ly dynamic over the last 10 years, both in substance and perspec¬tive: all core areas are considered now in legal science and in EC legislation, and there are even the prospects of some kind of codification. On the other hand, constitutional values and their impact on private law have been an issue of high concern in major Member States over decades, namely Italy and Germany, but as well the Netherlands - hence the strong presence of scholars and practising lawyers from these countries in this book. Constitutional values have, however, found their way to the EC level and the national

discussions have inspired a European one, with three core values discussed: Fundamental Freedoms, fundamental rights and constitutional system building principles- such as the social welfare state or the rule of law. Their impact on private law can be sensed nowadays quite considerably also on the European level. These fundamental values are often seen as the ingredient, which renders European Private Law, namely European Contract Law, more responsive to social values or more "humane". For all these reasons, the book combines comparative law, EC Law and interdisciplinary approaches to the question "Constitutional Values and European Contract Law". Outstanding scholars from six Member States and beyond - quite a few also practising lawyers - discuss the issue and do so for the first time on such a broad and all-encompassing basis.

European Contract Law

This edition includes many updates and revisions to the first edition, especially in light of the changes to the French Code Civil. Furthermore, the book comprises a wealth of translated extracts of legislation, cases, and academic literature. This text comprehensively covers all aspects of contract law in several European jurisdictions.

Towards a European Civil Code

In 1989 the European Parliament called for the elaboration of a European Civil Code and although the European Commission has not yet shown much enthusiasm for this idea, many legal scholars consider it to be a great challenge. the desirability and possible content of a European Civil Code. The book is divided into two parts. The first part examines the general issues which concern the unification of private law in Europe. private law that were considered to be appropriate for a unification on a European level. Because of the numerous reference made throughout the book to the UNIDROIT Principles for International Commercial Contracts and to the Principles of European Contract Law, these texts have been reproduced in an annex to this book.

European contract law

This particular report from the European Union Committee (HLP 95, ISBN 9780108444364) considers the proposal for a Draft Common Frame of Reference in respect of European contract law. The Draft contains principles, definitions and model rules in the form of a code covering wide areas of Civil Law. The Committee notes some significant issues relating to the general approach the Draft adopts, along with differences between the model rules set out in the Draft and the provisions of English common law. The Committee remains opposed to a harmonised code of European contract law and does not believe the European Commission has a useful role in promoting or developing an alternative set of contractual terms for use by contracting parties. It believes one way forward may be for the Commission to identify particular key areas that give difficulty under existing Community law or are likely to require legislative intervention. The Committee recognises the value of the Draft as an academic work by presenting useful material for discussion and can act as an aid to the mutual understanding of the diverse legal systems represented in the European Union.

The Constitutional Foundations of European Contract Law

Based on the author's thesis (Ph.D.)--University of Leuven, 2010.

Principles of European Contract Law

This volume offers proposed Articles, followed by comments and information. Topics include: plurality of debtors and creditors, assignment, substitution of new debtor and transfer of contract, set- off, prescription, illegality, and conditions and capitalisation of interest.

Contents and Effects of Contracts-Lessons to Learn From The Common European Sales Law

This book presents a critical analysis of the rules on the contents and effects of contracts included in the proposal for a Common European Sales Law (CESL). The European Commission published this proposal in October 2011 and then withdrew it in December 2014, notwithstanding the support the proposal had received from the European Parliament in February 2014. On 6 May 2015, in its Communication ‘A Digital Single Market Strategy for Europe’, the Commission expressed its intention to “make an amended legislative proposal (...) further harmonising the main rights and obligations of the parties to a sales contract”. The critical comments and suggestions contained in this book, to be

understood as lessons to learn from the CESL, intend to help not only the Commission but also other national and supranational actors, both public and private (including courts, lawyers, stakeholders, contract parties, academics and students) in dealing with present and future European and national instruments in the field of contract law. The book is structured into two parts. The first part contains five essays exploring the origin, the ambitions and the possible future role of the CESL and its rules on the contents and effects of contracts. The second part contains specific comments to each of the model rules on the contents and effects of contracts laid down in Chapter 7 CESL (Art. 66-78). Together, the essays and comments in this volume contribute to answering the question of whether and to what extent rules such as those laid down in Art. 66-78 CESL could improve or worsen the position of consumers and businesses in comparison to the correspondent provisions of national contract law. The volume adopts a comparative perspective focusing mainly, but not exclusively, on German and Dutch law.

The Emergence of EU Contract Law

The emergence of an EU contract law is one of the most significant legal developments in Europe today. Exploring the origins and evolution of the discipline, from the Sales Directive to the Common Frame of Reference, the book advances a framework for the further harmonization of contract law that embraces diversity and pluralism.

The Future of the Commercial Contract in Scholarship and Law Reform

This book explores commercial contract law in scholarship and legal practice, suggests new research agendas and provides a forum for debate of typical issues that might benefit from further attention by scholarship and legislatures. The authors from over ten different jurisdictions take an international and comparative approach. Not confined to EU law it re-opens the debate internationally and seeks to reclaim the wider meaning of European law as rooted in geography and cultural legal heritage. There is a need to focus on commercial contracts in more detail in research and legislation. The transactional approach, the role of recent law reform, including the new French Civil Code, cross-border dealings, substantive contract law in public international law and ICSID arbitration as well as current contractual practices like OEM, CSR, contractual co-operation, sustainability and intra-corporate arbitration contribute to a wider regulatory outlook for commercial transactions.

The Principles of European Contract Law (Part III) and Dutch Law

The Principles of European Contract Law, prepared by the so-called Lando Commission, today constitute the most advanced project on the harmonisation of European private law. As well as providing a set of rules which could facilitate cross-border trade within Europe, the Principles can be seen as a modern lex mercatoria which, for example, could be referred to by arbitrators deciding a case according to internationally accepted principles of law. Furthermore, the Principles provide a framework for EU legislation on contract law and, more importantly, they can be viewed as a first step towards a European Civil Code. They may also prove to be a catalyst for the development of national legislation, judicial decisions and legal doctrine. This new title, which follows the first volume covering Parts I and II of the Principles, includes chapters on plurality of parties, assignment of claims, transfer of contract, set-off, prescription, illegality and conditions. It provides a systematic overview of the Principles in comparison with Dutch law, which will be of interest not only in the Netherlands but also to lawyers in other countries who need to gain a clearer understanding of the Dutch contract law system.

European Private Law After the Common Frame of Reference

The book is a must read for anybody interested in the future development of European private law. European Private Law News This volume contains a valuable collection of essays by a group of reputable academics, each dealing with a particular aspect of the development of a substantive law of contract at European level. The contributors have a variety of interests and perspectives. The topic is clearly of great current interest throughout the European Union and beyond. Peter Stone, University of Essex, UK European Private Law after the Common Frame of Reference brings together several interesting contributions from a distinguished group of scholars, and sheds light on the important issue of legal harmonization from an interdisciplinary and comparative perspective. Francesco Parisi, University of Minnesota, US and University of Bologna, Italy The Common Frame of Reference has several potential functions, some reconcilable, others mutually exclusive. Its size, its shape, its true legal nature and its content all remain contested. Modest or ambitious, toolbox or code-in-waiting? Its chameleon character is its strength and simultaneously its weakness, and equally the reason why it has

attracted such attention. In this book the editors have assembled a veritable who s who in the field and it is a terrific read. Stephen Weatherill, University of Oxford, UK This book paves the way for, and initiates, the second-generation of research in European private law subsequent to the Draft Common Frame of Reference (DCFR) needed for the 21st century. The book gives a voice to the growing dissatisfaction in academic discourse that the DCFR, as it stands in 2009, does not actually represent the condensed available knowledge on the possible future of European private law. The contributions in this book focus on the legitimacy of law making through academics both now and in the future, and on the possible conceptual choices which will affect the future of European private law. Drawing on experience gained from the DCFR the authors advocate the competition of ideas and concepts. This fascinating book will be a must-read for European lawyers, private lawyers in the Member States and academics dealing with conceptual issues of the future of the national and the European private law. Advanced students in both law and international business will also find this book invaluable, as will US scholars interested in the US EU comparison of different legal orders.

EU Law and Private International Law

European Union Law and Private International Law both attempt to resolve a conflict of laws. There is however a certain tension between the two disciplines. The present book proposes suggestions to enhance their mutual understanding.

Uniform Rules for European Contract Law?

Over the last 30 years, the evolution of acquis communautaire in consumer law and harmonising soft law proposals have utterly transformed the landscape of European contract law. The initial enthusiasm and approval for the EU programme has waned and, post Brexit, it currently faces increasing criticism over its effectiveness. In this collection, leading academics assess the project and ask if such judgements are fair, and suggest how harmonisation in the field might be better achieved. This book looks at the uniform rules in the context of: the internal market; national legislators and courts; bridging the gap between common and civil law; and finally their influence on non-member states. Critical and rigorous, it provides a timely and unflinching critique of one of the most important fields of harmonisation in the European Union.

Standard Contract Terms in Europe

Ever since the Directive on Unfair Terms in Consumer Contracts of 1993, the European project has been working intensively towards harmonization of contract law across all EU Member States. To date, virtually none of the many problems that have arisen have been resolved. The SECOLA Annual Conference convened in Prague in 2005 to consider the specific topic of unfair terms and to imagine ways in which the obstacles raised by this provocative issue might be overcome. In this book, which presents revised versions of the papers presented at that conference, fourteen outstanding European scholars examine basic questions about the differing conceptions of contract law in the national legal systems of the Member States, divergent legal techniques such as interpretation of contract and divergent approaches to legal reasoning, and contrasting views about the nature of the problems presented by unfair terms in contracts. Among the contentious matters discussed are the following: the tension between party autonomy and social justice; control over freedom of contract in the name of substantive fairness and efficiency; interpretation of contract terms the intrusion of competition law into contract law; the disputed meanings of good faith and legitimate expectations; the requirement of 'plain intelligible language'; and characterization problems Above all the essays ask: Can harmonization of European contract law be achieved? And if so, how? The answers offered not only clarify the stage we have arrived at in this ongoing initiative, but also identify the essential conflicts that must be understood if we are to secure meaningful regulation of contract terms at a transnational level. For these reasons the book is enormously valuable to all parties interested in this crucial component of European integration.

An Academic Green Paper to European Contract Law

The Contract is the core tool of governance in a free market economy. An EU Contract Law Code is now on the political agenda because all three legislative bodies in the EU and most member states favour it in principle. In its communication of July 2001, the Commission proposed three major options: to enhance the existing EC Contract Law by eliminating inconsistencies; introducing a European Code which substitutes national laws; and introducing a European code which only supplements national laws. This book achieves three things: For the first time, European academia is discussing these three

options in an extensive and systematic way with pros and cons, in a transparent and systematic way, along broad lines and often also important details. The book contains the views of all protagonists from all those who really drafted the models to all those who illustrated the potential of decentralized rule-making and invented the very idea of an Optional Code. This is the first book in which the optional Code, which is the alternative most likely to come, is thoroughly analysed at all. This work also contains a full map of design possibilities. It is the executive summary of what European academia thinks of the future of European Contract Law and a European Code. It is the Academic Green Paper on European Contract Law.

Principles, Definitions and Model Rules of European Private Law

In this volume, the Study Group and the Acquis Group present the first academic Draft of a Common Frame of Reference (DCFR). The Draft is based in part on a revised version of the Principles of European Contract Law (PECL) and contains Principles, Definitions and Model Rules of European Private Law in an interim outline edition. It covers the books on contracts and other juridical acts, obligations and corresponding rights, certain specific contracts, and non-contractual obligations. One purpose of the text is to provide material for a possible "political" Common Frame of Reference (CFR) which was called for by the European Commission's Action Plan on a More Coherent European Contract Law of January 2003.

Contract II

The present volume is the second of a series. In addition to revising those parts of the ACQP which were published in the “Contract I” volume, it presents numerous new rules, in particular on remedies for non-performance and on certain specific situations or contracts such as delivery of goods, package travel and payment services. The work is particularly aimed at enriching the current controversial debate on the way forward for European contract and consumer law stimulated by the European Commission's Proposal for a Directive on Consumer Rights. The Acquis Principles include: - General rules formulated on the basis of existing EC law - An accompanying commentary, outlining the foundations in the Acquis - Definitions of core legal terms and a glossary on terminology The Acquis Group aims to reformulate the present patchwork of directives, regulations and judgments on EC private law as a coherent Restatement, the Acquis Principles (ACQP). These Principles present the current state of EC law in a structure which allows readers to identify commonalities, contradictions and gaps in the Acquis.

The Common European Sales Law in Context

European Contract Law unification projects have recently advanced from the Draft Common Frame of Reference (2009) to a European Commission proposal for an optional Common European Sales Law (2011) which is to facilitate cross-border marketing. This book investigates for the first time how CESL and DCFR rules would interact with various aspects of domestic law, represented by English and German law. Nineteen chapters, co-authored by British and German scholars, examine such interface issues for eg pre-contractual relationships, notions of contract, formation, interpretation, and remedies, extending to non-discrimination, third parties, transfers or rights, aspects of property law, and collective proceedings. They go beyond a critical analysis of CESL and DCFR rules by demonstrating where and how CESL rules would interact with neighbouring areas of English and German law before English and German courts, how domestic traditions might influence the application, which aspects might motivate sellers and buyers to choose or reject CESL, and which might serve as model for national legislators. The findings are summarized in the final two chapters.

Rules and Principles in European Contract Law

In its case law the Court of Justice of the European Union has acknowledged general principles of EU law, which have a constitutional status. In addition the Court of Justice has also recognised 'general principles of civil law', relying upon values which are traditionally rooted in the domain of private law. The pervasive use of principles, both in the case law of the Court of Justice and in other EU projects of 'soft ' and 'hard' law, challenges legal scholarship. Although the concepts of principles and rules have been widely discussed within the context of national legal orders, they need to be rethought at the European level, because the traditional view of a principle does not fit the European Union's constitutional architecture. This also applies to the general principles of civil law, for instance good faith. They also have to be redefined to be consistent with the European Union's legal order.The contributions

in this book examine EU general principles and their distinction from rules both within the context of the European Union as well as of the Member States. Moreover, they focus on the relevance of EU general principles for contract law and of principles of civil law for a European contract law

The Interaction of Contract Law and Tort and Property Law in Europe

Against the background of the creation of an EU-wide frame of reference for private law relevant to the Common Market, this study, which was requested by the EU Commission, analyses the dovetailing between contract and tort law on the one hand, and between contract and property law on the other. The study examines the legal orders of almost all the Member States of the EU, illustrates the differences between contractual and non-contractual liability and evaluates the different systems of the transfer of property, of movable and immovable securities as well as trust law. The study comes to the conclusion that the intensive considerations on the creation of a model-law in the area of European private law do not allow these thoughts to be limited to contract law. Such a limitation to the scope of the regarding of this area would probably cause more problems than it would solve, or at any rate not do justice to the needs of the Common Market.

Basil Markesinis: Leading the way to a ‚new ius europaeum' - A review and appraisal of the Europeanization of Private Law

Seminar paper from the year 2006 in the subject Law - Comparative Legal Systems, Comparative Law, grade: 13, Saarland University, language: English, abstract: It is now widely accepted that the law of the European member states should be harmonized to make Europe's economy more competitive. Business needs to operate across borders efficiently to stimulate a more competitive supply of goods and services. A plurality of separate solutions for the same issue is a risk that the uncertainty and complexity of the legal environment will undermine rather than enable legitimate economic activity. Therefore we need to create an economic environment underpinned by legal certainty and security. This essay on European Private Law discusses the progress of Europeanization in the field of Contract Law. It will, in doing so, especially focus on legal education and its contribution to achieve unification and harmonisation of European Union law. But, as the title indicates, in the actual centre of this essay, will be one scholar, who has significantly contributed to the understanding of comparative law and who has increased its status as a recognised legal subject: Basil Markesinis. It is furthermore my goal to provide English law students who are interested in comparative law topics with a guide to useful literature for their studies, especially with regards to German Law. I hope that this essay can contribute that comparative law may no longer be a "subject in search of an audience", as Markesinis called it[1], and to persuade English students of the benefits of comparative law studies.

The Politics of the Draft Common Frame of Reference

This collection of essays reflects both the diversity of the group's work and the common thread that runs through it. The core claim here is that the DCFR, despite the Commission's characterization of its proposals as purely technical, cannot escape politics. The intent is to critically identify and evaluate the model of social justice underlying the DCFR.

Dispute Avoidance and European Contract Law

Since early 2000, European institutions have politically prioritized the need for greater coherence and uniformity in European private law. Contract law, in particular, has remained center stage. Concerns - that the functioning of the Community's internal market has been hampered by divergence in Member States' national contract rules, and that both business and consumers are dissuaded from contracting cross-border - have prompted a series of landmark Communications and an Action Plan. Most recently, there has been full institutional support for the delivery of a decidedly cryptic 'Common Frame of Reference, ' comprised of general principles, model rules, and uniform legal terminology. Despite a lack of convincing empirical data in support of the convergence thesis, a diminished business interest has in part allowed the proponents of a comprehensive codification of private law to set the political and academic agenda. Yet this clamor for codification has in many respects overlooked the mechanics of commercial contracting in particular, the importance of contract drafting, and the complex negotiations that lead to deals both domestically and cross border. This book therefore engages with two 'holy grails' of modern contract scholarship - the appropriate design of EC contract rules and judicial treatment of preliminary incomplete bargains. In so doing, the study reveals the weakness of existing soft law initiatives and framework codes in capturing the degree of specificity and complexity in the field. Instead,

the case is made for a viable methodology of dispute avoidance aimed at re-conceptualizing and re-orientating the harmonization effort

New Features in Contract Law

Economic change, globalisation and harmonisation of European Law have brought new challenges to contract law. The contributions in this Volume by prominent legal scholars deal with current trends and perspectives in European and International Contract Law and their impact on the various domestic legal systems. The Compendium provides an analysis of new developments in formation of contract, performance and remedies, consumer contract law and the particularly controversial area of anti-discrimination law. Experts in their field examine the underlying legal principles and problems arising in legal practice in Common Law and Civil Law. The essays written in English, German and French are the product of a series of lectures held in 2006 at the Centre for European Private Law (CEP) at the University of Münster, Germany. The contributing authors are: John Adams, Hugh Beale, Giuditta Cordero-Moss, Barbara Dauner-Lieb, Michele Graziadei, Thomas Gutmann, Geraint Howells, Simon James, Paul Lagarde, Matthias Lehmann, Peter Møgelvang-Hansen, Salvatore Patti, Thomas Pfeiffer, John C. Reitz, Judith Rochfeld, Martin Schmidt-Kessel, Jürgen Schmidt-Räntsch, Alessandro Somma, Stefano Troiano, Christian Twigg-Flesner, Antoni Vaquer Aloy and Fryderyk Zoll.

Research Handbook on EU Consumer and Contract Law

Research Handbook on EU Consumer and Contract Law takes stock of the evolution of this fascinating area of private law to date and identifies key themes for the future development of the law and research agendas. The Handbook is divided into three parts:

Cases, Materials and Text on Contract Law

This is the third edition of the widely acclaimed and successful casebook on contract in the Ius Commune series, developed to be used throughout Europe and beyond by anyone who teaches, learns or practises law with a comparative or European perspective. The book contains leading cases, legislation and other materials from English, French and German law as the main representatives of the legal traditions within Europe, as well as EU legislation and case law and extracts from the Principles of European Contract Law. Comparisons are also made to other international restatements such as the Vienna Sales Convention, the UNIDROIT Principles of International Commercial Contracts, the Draft Common Frame of Reference and so on. Materials are chosen and ordered so as to foster comparative study, complemented with annotations and comparative overviews prepared by a multinational team. The third edition includes many new developments at the EU level (including the ill-fated proposal for a Common European Sales Law and further developments linked to the digital single market) and in national laws, in particular the major reform of the French Code civil in 2016 and 2018, the UK's Consumer Rights Act 2015 and new cases. The principal subjects covered in this book include: An overview of EU legislation and of soft law principles, and their interrelation with national law The distinctions between contract and property, tort and restitution Formation and pre-contractual liability Validity, including duties of disclosure Interpretation and contents; performance and non-performance Remedies Supervening events Third parties.

The Harmonisation of European Contract Law

After an extended period in which the European Community has merely nibbled at the edges of national contract law, the bite of a 'European contract law' has lately become more pronounced. Many areas of law, from competition and consumer law to gender equality law, are now the subject of determined efforts at harmonisation, though they are perhaps often seen as peripheral to mainstream commercial contract law. Despite continuing doubts about the constitutional competence of the Commission to embark on further harmonisation in this area, European contract law is now taking shape with the Commission prompting a debate about what it might attempt. A central aspect of this book is the report of a remarkable survey carried out by the Oxford Institute of European and Comparative Law in collaboration with Clifford Chance, which sought the views of European businesses about the advantages and disadvantages of further harmonisation. The final report of this survey brings much needed empirical data to a debate that has thus far lacked clear evidence of this sort. The survey is embedded in a range of original and up-to-date essays by leading European contract scholars reviewing recent developments, questioning progress so far and suggesting areas where further analysis and research will be required

The Foundations of European Private Law

There remains an urgent need for a deeper discussion of the theoretical, political and federal dimensions of the European codification project. While much valuable work has already been undertaken, the chapters in this volume take as their starting point the proposition that further reflection and critical thought will enhance the quality and efficacy of the on-going work of the various codification bodies. The volume contains chapters by representatives of the Common Frame of Reference, the Study Group and the Acquis Group as well as by those who have not been involved in particular projects but who have previously commented more distantly on their work - for instance those belonging to the Trento Group, and the Social Justice Group. The chapters between them represent the most comprehensive attempt so far to survey the state of the codification project, its theoretical, political and federal foundations and the future prospects for enforcement and compliance.

Principles of European Law

The research of the Study Group on a European Civil Code seeks to advance the process of Europeanisation of private law by drafting a set of common European principles which are relevant for the functioning of the common market. The principles provide national jurisdictions with a grid reference for the future development of the law.

Contract I

The Acquis Group - also known as the European Research Group on Existing EC Private Law - pursues the objective of presenting, in a restated form known as the Acquis Principles, the large and sometimes incoherent patchwork of existing EC private law. These principles reflect the current state of EC law in a structure which allows for the identification of commonalities, contradictions, and gaps. They function as a tool for the better understanding and improvement of EC private law. They are also intended to ensure that the existing EC law is appropriately reflected in the broader Common Frame of Reference. The principles include a commentary outlining the Acquis foundations, as well as definitions of core legal terms and a glossary on terminology. Formulated with the Acquis Principles in mind, Contract I is the first of a new series. It covers the areas of general EC contract law which surround the formation of contracts, including key rules on pre-contractual duties, the conclusion of a contract, and its content.

Principles, Definitions and Model Rules of European Private Law

This landmark reference work marks the culmination of over 20 years' research into the history and potential future of European private law. An international team of researchers have analyzed the diverse national traditions of private law to compile a codified set of principles of European law for the law of obligations and core aspects of the law of property - known as the Draft Common Frame of Reference. This full edition of the reference work comes complete with all the scholarly apparatus needed to interpret the principles. Full commentary is provided on the text of the 'draft common frame of reference', together with references to and comparative analysis of all the national legal materials used as a basis of the text. The complete work will form a central reference point for all future discussion of the harmonization of European private law, and the interpretation of EU measures in the field. It also

represents a major reference work in its own right, offering the fullest resource available on European private law, invaluable for researchers in comparative law and European legal history.

The Organizational Contract

This book introduces and develops the paradigm of the organisational contract in European contract law. Suggesting that a more radical distinction should be made between contracts which regulate single or spot exchanges and contracts that organize complex economic activities without creating a new legal entity, the book argues that this distinction goes beyond that between spot and relational contracts because it focuses on the organizational dimension of contracting and its governance features. Divided into six parts, the volume brings together a group of internationally renowned experts to examine the structure of long-term contractual cooperation; networks of contracts; knowledge exchange in long-term contractual cooperation; remedies and specific governance rules in long-term relationships; and the move towards legislation. The book will be of value to academics and researchers in the areas of private law, economic theory and sociology of law, and organizational theory. It will also be a useful resource for practitioners working in international contract law and international business transaction law.

Economic Analysis of the DCFR

The Economic Impact Group (EIG) was created to support the work on the DCFR with insights from law and economics. It brings together a number of leading European law and economics scholars. The Group looked at the main elements of the DCFR with two questions in mind: from an economic perspective, is it sensible to harmonize private law across Europe for this specific element, and is the solution chosen in the DCFR optimal? This book presents the outcome of the work of the EIG. It deals with key issues such as the function of contract law, contract formation, good faith, non-discrimination, specific performance versus damages, standard contractual terms and consumer protection in contract law. The EIG complements the work of the drafters of the DCFR with insightful and critical assessments, based on the well-established law and economics literature.

The Role of the EU in Transnational Legal Ordering

This book explores questions of transnational private legal theory in the context of the external dimension of EU private law. The interaction between existing theories of transnational ordering and the external reach of European Regulatory Private Law is articulated through examination of what are found to be the three major proxies of transnational private ordering: private contracts, standards and codes.