

Subject Index

A

Albanian Reform of Consumer
Protection Law, 165-175
Civil Code, relationship, 171-174
Directive on 'door-step
sales,' 172
Directive on Sale of Consumer
Goods implementation,
173-174
Directive on Unfair Terms,
172-173
CPA 2008, 168-175
consumer *Acquis*, 168-170
internal harmonization, 171-175
systematic approach, 170-171
internal harmonization, 171-175
applicable law, consumer
contracts, 174-175
relation to Civil Code, 171-174
legislation on, 167
relationship with EU, 166-167
Stabilization and Association
Agreement (SAA), 166
Stabilization and Association
Process (SAP), 166
Außervertragliche Haftung für den
einem anderen zugefügten
Schaden, 205-225

B

Belgian Case Note: former legal
father's right, 390-405
legal establishment, 398-404
apparent status, 403-404
contestation, 399-400
evidence, biological paternity,
400-401
formal opposition against, 401-402
former direct proceedings, 401

maintenance rights and obligations,
(former) husband, 393-396
claim for damages, 395-396
judicial decision contest, 393
recovery claim, 394-395
Inzidentfeststellung, paternal
affiliation, 396-398
biological reality examination,
397
opposability, judicial decisions,
396-397
possible preliminary dispute,
397-398
paternal maintenance obligation,
390-393
conversion, natural obligation
into civil obligation, 392-393
legal affiliation between father
and child, 390-391
sexual intercourse with mother,
391-392
Bericht zur Tagung: Verjährungsrecht
in Europa - Zwischen Bewährung
und Reform, 195-199

C

Cartesio decision by ECJ, Case C-210/
06, 569-578
facts, 569-571
freedom of establishment, 571-575
political' pressures, 575-577
Chinese Law on Property of 2007,
983-1004
background, 985-990
evaluation, 1002-1004
drawbacks, 1003
prospects, 1004
values, 1002-1003
features, 990-1002

- communitarian value, 995-998
- comparative property law, 1000-1002
- disintegration of traditional civil customs, 998-1000
- socialist ideology orientated, 993-995
- statutory structure, 990-993
- private property with Chinese characteristics, 983-1004
- Civil and commercial law of the EU Member States, 429-441
- approaches, 430-433
 - foreign company's statute, 432-433
 - 'pointilist' sequence of changes, 431
 - political consequences, 432
- ECJ practice on, 429-441
- European Jurists' Forum, 430
- legal rules interpretation, 436-439
 - EU directives, 436-437
 - general principles, 438-439
 - possible consequences, 437-438
 - self-restraint, 437
- policy questions, 439-441
 - ensuring undistorted competition, 439-440
 - 'Four Freedoms' and fundamental rights, 439
 - unjustified enrichment, 440
- preliminary observations, 429-430
- role, Court of Justice, 433-436
 - EC Treaty formulation, 433
 - Hartley's opinion, 434
 - Opinion 1/71, 435
- Civil Law in the Czech Republic, 155-164
 - concept of 'Consumer,' 157-159
 - DCC's definition, 158-159
 - ECJ, defined, 157-158
 - as 'non-professional,' 158
 - 'consumer contracts,' 159-161
 - inertia selling, 160-161
 - real offer, 161
 - 'timeshare,' 159-160
 - Czech Civil Code (DCC), 156
 - Directive 1999/44/EC
 - implementation, 162-163
 - draft version, Civil Code and Consumer Protection, 155-164
 - preparation of DCC, 156-157
 - Claim for damages, Greece, 613-619
 - distance in time, harm *v.* death, 613-614
 - provisions, 613
 - suicide, tortfeasor
 - spouse/close relative, 614-617
 - victim, 617-618
 - as work accident, 618-619
 - 'Common Core of European Private Law,' 407-414
 - common core project, 409-411
 - participants recruitment, 410
 - questionnaires, three-level intellectual operation, 411
 - Europeanization, institutions and scholars, 408-409
 - plenary session, 407
 - reappraisal, 411-413
 - Americanization and politicization of, 412-413
 - chairpersons report, 411-412
 - 15th Anniversary Meeting, 407-414
 - The COMPR of Germany and France, 881-889
 - bilateral treaty making, 889
 - Common Optional Matrimonial Property Regime (COMPR), 881-889
 - genesis, 881-882
 - legal background, 882-884
 - Member States competence, 884
 - PIL perspective, 887-888
 - substance of, 885-886

- as substantive model for Europe?, 886-887
- 'unification race,' 888-889
- Consumer Rights Directive in the Netherlands, 57-102
- broader material scope, 76-78
- business-to-consumer (b2c)
 - contracts, 92-100
 - bounded rationality, 95
 - economically weaker, 93-94
 - information asymmetry, 94
 - legal basis, 97-98
 - neo-commercialism, 99-100
 - no choice, 96-97
 - no pursuit of profit, 95-96
 - substantive legal certainty, 98-99
- characteristics, 65-91
- Commission's review, 74-76
- Common Frame of Reference (CFR), 62
- on consumer, commercial and general contract law, 57-102
- Contracts for the International Sale of Goods (CISG), 62
- Draft Common Frame of Reference (DCFR), 64
- European Commission Action Plan, 58, 62
- exhaustive harmonization, 78-88
 - Commission' presumption, 81-82
 - conceptions, 82-87
 - Distance Selling Directive, 80-81
 - material and personal scope, 78-79
- full harmonization, 89-90
- internal market performance, 65-69
 - 'business-to-consumer' trade, 67
 - consumer friendly regulations, 67-69
 - objective, 65-67
- limitation to consumers, 69-74
- political support, 91-92
 - Dutch legislator, 92
 - European Community legislator, 91-92
- revision of *Acquis*, 62-65
- rise, fall and rebirth of Commercial Law, 59-62
- sharp distinction, 91-100
 - b2c contracts, 92-100
 - political support, 91-92
- Consumer Sales Law in Proposal for Consumer Rights Directive, 15-55
- Article 93: 'high level of consumer protection,' 52
- Articles 22 and 23 regulations, 21-25
- commercial guarantees, 46-49
 - default content, 47-49
 - transferability, 46-47
- conformity and non-conformity, 25-32
 - Article 28: defect manifests, 25
 - legal guarantee, duration, 27-30
 - notion of, 25-27
 - presumption of, 30-32
- description, existing directives, 16
- direct producer liability, 49-52
 - direct claim, 50-51
 - political feasibility, 51-52
- Draft Common Frame of Reference (DCFR), 18
- duty to notify, 32-36
 - implementation in Member States, 33
 - lack of conformity, 35-36
 - legal guarantee under Dutch law, 32
 - non-conformity, 34-35
- European Court of Justice (ECJ), 17
- Green Paper on the Review of the Consumer *Acquis*, 30, 34, 36, 49
- internal market, 52-53
- non-conformity

- duty to notify, 34-35
- notion of, 25-27
- remedies, 36-43
- second-hand goods, 43-46
- notion of 'Consumer,' 17-19
 - defined, 17
 - draft-CFR definition of, 18-19
 - limitations, proposed directive, 17-18
- notion of 'Goods,' 19-21
 - Article 21: consumer sales provisions, 20-21
 - 'mixed contracts,' 19-20
- Principles of European Law on Sales (PELS), 21
- remedies for non-conformity, 36-43
 - damages, 41-43
 - hierarchy, 36-38
 - repair and replacement, 38-39
 - termination and price reduction, 39-41
- right to claim damages, 54
- risk, delivery and passing of goods, 21-25
 - consumer cooperation, 23-24
 - default rule, 21-23
 - obligation to transfer property, 24-25
- second-hand goods, 43-46
 - Article 2 under (15): fixed-price offer, 46
 - in PELS, 44
 - 'public auction,' defined, 45
 - shorter period, liability, 43-44
- Corr* case
 - an Irish perspective, 621-629
 - Civil Liability Act 1961, 621-622
 - contributory negligence, 627-629
 - foreseeability, type of injury, 623-625
 - novus actus interveniens*, 625-626
 - thin skull principle, 625
 - annotations, 589-599
 - aspects français, 607-611
 - case history, 589
 - claim for damages, Greece, 613-619
 - distance in time, harm *v.* death, 613-614
 - provisions, 613
 - suicide, tortfeasor, 614-619
 - contributory negligence, 596-599
 - Article VI.-5:102 DCFR, 597
 - suicidal tendencies, 598
 - from Danish perspective, 601-606
 - foreseeability, 601-602
 - Industrial Injuries Act, 602-603
 - tort law, 603-606
 - employer's liability, Dutch Law, 631-647
 - Article 6:101, 644-646
 - background, 631-632
 - Causa Interveniens*, 637-639
 - contributory negligence, victim, 640-643
 - damage and negligence relationship, 635-636
 - duty of care, 632-633
 - victim's behaviour, 634-635
 - from Polish perspective, 667-679
 - contributory negligence issue, 672-675
 - employer's liability, 667-668
 - foreseeability issue, reparable damage, 668-670
 - suicide and causation, 675-677
 - third-party claims, 678-679
 - Volenti Non Fit Iniuria*, 671-672
 - scope of liability, 591-596
 - v.* causation, 591-593
 - limitation factors, 593-596
 - under Spanish Tort Law, 649-665
 - contributory negligence, 657-665
 - criminal law approach, 650-652
 - foreseeability issue, 655-657

- insurance law, 652
- labour law *v.* tort law, 652–655
- suicide data, 650
- suicide after accidents, 590–591
- under Swiss social law, 681–684
 - facts, 681
 - proposed solution, 682–684
 - social security system, 681–682
- Court of Justice and Private Law, 443–474
- CFR provisions, 466–469
 - Article 5 No.1, Brussels Convention, 466
 - compensation, non-material damage, 468–469
 - Directive 93/13, 466–468
- insecurity and inconsistencies, 454–460
 - autonomous interpretation, Brussels Convention, 454–455
 - non-material damage, 458–460
 - standard contract terms and good faith, 455–458
- judicial architecture, 469–472
 - decentralization, 470–471
 - private litigation, 469–470
 - subjective rights and reference procedure, 471–472
- principles, 460–465
 - European Private Law, 462–465
 - Union Law, 460–462
- transformation, European Court, 445–449
 - administrative tribunal and international court, 445–446
 - reference procedure extension, 446–447
 - significance, 447–448
 - uniformity function, 448–449
- Union's legislation, 449–453
 - fragmentary nature, single acts, 451–452
 - lack of system, 451

- legislative bases, 449–450
- mandatory provisions, 450–451
- meaningful legislative materials, 453
- technical deficiencies, legislative drafting, 452
- Cross-border successions, 685–687

D

- DCFR and restitution for wrongs, 813–822
 - Article VI.-6:101 (4) DCFR-recovery of profits obtained by wrongdoing, 817–818
 - Article VII.-1:101 (1), 814–815
- enrichment claim for wrongdoing, 815–817
 - Article VII.-3:101 (1) (c), 816
 - ‘monetary value’ and ‘saving,’ 816–817
- Model Rules, 814
- separate recovery of profit, 818–821
- The DCFR and the private enforcement of competition law, 1079–1119
 - competition law approach, 1082–1084
 - defences, 1112–1118
 - Article VI-5:202(1) DCFR, 1118
 - authority of law, 1115–1116
 - benevolent intervention, 1117
 - clauses excluding or limiting liability, 1118
 - conduct of damaged party, 1115
 - consent, 1112–1115
 - mental incompetence, 1117–1118
 - right or interest worthy of protection, 1117
 - private enforcement of competition law, 1079–1119
 - private law approach, 1081–1082

- rules on non-contractual liability, 1085-1103
 - compensation for competition law infringements, 1098-1099
 - function of tort law, 1086-1088
 - limitation period, 1101-1103
 - problem of passing on damage, 1099-1101
 - small claims and collective redress, 1096-1098
 - structure of non-contractual liability, 1085
 - trigger of liability, 1088-1095
- as source of inspiration, 1103-1118
 - causal link, 1104-1108
 - damages, 1108-1112
 - defences, 1112-1118
- unlawful conduct *v.* legally relevant damage, 1088
- unlawfulness and negligence, 1089-1095
 - Article VI-3:102, 1090-1092
 - Courage* case, 1092
 - Green Paper, 1094
 - Manfredi* case, 1093
 - White Paper, 1094-1095
- unlawfulness as requirement for liability, 1088-1089
- Distance Selling Directive 97/7/EC in Germany, 185-194
 - application of law, 190-192
 - expected total performance, 191-192
 - testing and use, 190-191
- ECJ decision, 188-190
 - burden of proof, 190
 - right of withdrawal, 189
- implementation, 185-186
- interests at stake, 188
- Pia Messner* case, 185-194
 - influence of judgment, 193-194
 - legal background, 187
 - potential claims of trader, 192-193
- The Draft common frame of reference (DCFR), 1273-1275
 - Report of the International Conference on 'The Draft Common Frame of Reference: A National and Comparative Perspective,' 1273-1275
- Draft Directive on Consumer Rights, 5-14
 - consumer law: European concern, 14
 - criticism on Commission's reasoning, 8-11
 - cross-border transactions, 8-9
 - intervention in Member States' consumer protection schemes, 10-11
 - maximum harmonization, 5-14
 - multi-level legal order, 11-13
 - policy goal, 11-12
 - right of withdrawal, 13
 - rules against cross-border transactions, 13
 - proposal adoption, 6
 - reasoning of European Commission, 6-7
 - core of contract law, 6
 - legislators responsibility, 6-7
- Dutch case note: employer's liability for injured employee's suicide, 631-647
 - Article 6:101, 644-646
 - background, 631-632
 - Causa Interveniens*, 637-639
 - contributory negligence, victim, 640-643
 - damage and negligence relationship, 635-636
 - duty of care, 632-633
 - victim's behaviour, 634-635
- Dutch Case Note: paternity cases, 323-340

biological father *v.* legal father,
324-325

German case, 326-334

genetic parentage, children's
right, 332-334

judicial determination of

paternity, 329-332

retroactivity and denial of

paternity, 327-329

tort law and fidelity, unjust

enrichment, 326-327

'identification' of biological father,
323

legal position assessment, 335-337

biological father designation in
proceedings, 335

unjust enrichment, 335-337

'pseudo-legal' determination, 324

rights of biological father,
337-339

begetter recognition, 337-339

Kroon case, 339

E

ECJ (First Chamber) 6 October 2009,
Case C-40/08, 823-846

Asturcom case, 833-846

European Public Policy, 839-841

facts, 833-834

factual and legal elements

necessary for, 841-842

impacts on consumer arbitration,
842-843

judgment, 834-835

res judicata and the principle of
effectiveness, 836-838

towards a uniform

understanding, 843-846

Europeanization of Civil
Procedures, 824-826

Mandatory Consumer Law and
National Courts obligation to
apply EU Law *Ex Officio*, 826-833

Consumer Credit Directive,
831-832

Doorstep Selling Directive,
832-833

party autonomy and judicial
passivity, 826-828

Unfair Contract Terms Directive,
828-831

EC Treaty effects in Private Law,
527-548

Article 220, 529

Articles 94 and 95, 528-529

concepts, 529-538

compatibility, national
legislation, 533-534

consecutive questions,
532-533

harmonious interpretation, 537

infringement, Article 81,
530-531

liability of individuals, 531

nullity, 530

positive obligations, 534-536

subjective rights, 529-530

direct *v.* indirect horizontal effects,
543-548

Bosman judgment, 547-548

Defrenne I judgment, 544

Maduro's opinion, *Viking*, 543

non-discrimination provisions,
545-547

free movement of persons *v.* free
movement of goods, 538-543

Article 43, 540

Articles 28 and 29, 538-539,
541-543

Articles 81 and 82, 539-540

Éditorials

Consumer Rights Proposals and
Draft CFR, 1-3

The Impact of Community
Law on Domestic Private Law,
425-427

- Le Code civil européen: digestion ou inclusion ? Un éloge des genres, 203-204
- Towards an Intellectual History of European Private Law, 1051-1054
- Wenn China erwacht, erbebt die Erde!, 897-899
- Whose right/law is it anyway?, 703-704
- Die Entscheidungen des deutschen BGH vom 16.04.2008, 355-367
- Estonian SMS Loan Agreements, 129-142
- annual percentage rate of charge (APRC), 130
- applicable regulations, 130-131
- LOA provisions, 131
- procedures, 130-131
- consumer rights protection, 129-142
- description, 129-130
- General Part of the Civil Code Act (GPCCA), 132
- interest rate cap, 136-141
- Article II.-7:207 (II) DCFR, 140
- Article 32 section 2, 136-137
- average APRC, 138-139
- credit costs, 139
- credit repay under void contract, 141
- legal transaction, 139-140
- usurious contract, 137
- required information and implications, 132-134
- annual interest rate, 132
- burden of proof, 133-134
- durable medium, 132-133
- right of withdrawal, 134-136
- compensation for service, 135-136
- Directive 2008/48 provisions, 134-135
- EU law concerning fundamental rights, 475-486
- equal treatment, principle, 485
- features, EU legal system, 481-484
- methods, resolving conflicts, 481-482
- non-public regulations, 483-484
- freedom of contract, 484-485
- horizontal application, 476-484
- direct and indirect consequences, 477-478
- feature of, 481-484
- indirect, 478-479
- major issues, 476-477
- nature, fundamental rights, 479-481
- EU Law on International Company Law, 549-578
- Cartesio* decision by ECJ, Case C-210/06, 569-578
- facts, 569-571
- freedom of establishment, 571-575
- political' pressures, 575-577
- cross-border movement, 564-565
- directive on cross-border mergers, 565-566
- inbound obstacles, 559-562
- pseudo-foreign companies, 559-561
- real seat approach, 562
- legal existence, companies, 550-551
- local company rules to foreign companies, 563-564
- mutual recognition, 551-552
- outbound obstacles, 553-559
- cross-border conversion, company's seat, 556-559
- transfer, central management and control, 553-556
- right of establishment, 552-562

European certificate of succession
 (ECS) and national certificates,
 relationship, 1259-1271
 ‘delimitation-by-use approach,’
 1263-1266
 ‘backpacker function,’
 1264-1265
 explanatory memorandum to SP,
 1263
 necessity to delimit, 1266
 problem of conflict, 1265-1266
 England’s position, 1269-1270
 movable and immovable assets,
 1260
 principle of ‘non-replacement,’
 1261-1262
 ‘Priority Approach’ of MPI-
 Hamburg, 1262-1263
 ‘recognition-of-effects approach,’
 1266-1268
 unclear relationship?, 1261
 European Code of Private
 International Law, 705-728
 codification as a remedy, 715-724
 different methods, 721-724
 divergence in terminology,
 720-721
 lack of coordination, 717-718
 legislation techniques, 718-720
 multiplication, sources of Law,
 715-716
 Communautarization, 707-711
 conflict-of-law rules, 709-711
 International Civil Procedure,
 707-709
 EU plans, 712-715
 agenda, 712-713
 impact on National Legislation,
 713-715
 scenarios, 724-727
 unification of private international
 law, 706-707
 European Contract Law, 285-305
 enter into contracts decisions,
 295-298
 cooperation, 297-298
 legal diversity, 298
 loss aversion de-motivates
 searching, 297
 over-and under-estimating costs,
 296-297
 form and effect, harmonization,
 299-302
 default rule, 300-301
 optional code adoption, 299
homo economicus and *homo huma-*
nus, 289-295
 erroneous estimations, 291-293
 loss aversion and inertia,
 293-294
 sense of fairness, 294-295
 observations and suggestions,
 302-305
 harmonizing rule, 304
 ‘heuristic manipulation,’ 303
 (ir)relevance of legal diversity,
 295-305
 transaction costs, legal diversity,
 287-289
 cross-border contracts, 288-289
 negotiation and compliance
 costs, 288
 European court decisions on English
 Contract Law, 501-526
 characteristics, 520-525
 ‘commercial’ cases, 520-521
 parties agreement, 521
 ‘penalty defaults,’ 524
 pre-contract information,
 521-522
 termination, breach of contract,
 523
 Unfair Contract Terms Act 1977,
 525
 continental concepts, 505-513
 ‘absence of basis,’ 512-513

- enforceable rights, contracts, 509-510
- Hadley v. Baxendale* rule, 506-507
- legitimate expectation principle, 505-506
- lent money on security, 510-511
- offer and acceptance
 - analysis, 507
 - penalty clauses, 508-509
 - time-charterer liability, 511-512
- English courts attitude towards legislation, 516
- European Directives
 - implementation, UK law, 515-516
- good faith, notions of, 513-514
 - as control over substance, 520
 - as excluder, 518-520
 - as expansion joint, 517-518
 - resistance, 516-517
- nature of enquiry, 502-505
 - Consumer Credit Act 1974, 503-504
 - European legal meaning, 502-503
 - Human Rights Act 1998, 503
 - Regulations and Directives, 502
 - 'voluntary adoption,' 505
- European Directive on Consumer Rights, 103-117
 - black and grey lists, 111-112
 - Civil Code/consumer code, 114
 - committee on unfair terms, 112
 - consumers and DCFR, 115-117
 - contracts and Juridical Acts, 115-116
 - general provisions, 115
 - obligations and corresponding rights, 116
 - specific contracts, 116-117
 - cooling-off periods, 111
 - development of European Consumer Law, 104-107
 - 'informed consumer,' 107
 - rise and fall, 105-106
 - thirty years ago, 104-105
- duty to inform, 111
- v. existing directives*, 108-109
- extended consumer protection, 109
- no limitations, cross-border transactions, 110
- notion of transparency, 111
- plea for full harmonization, 109-110
- political momentum, 108
- regulation as an instrument, 108
- repair/replacement option, 112-113
- terminology: DCFR, 114
- total, full and complete harmonizations, 110
- two-year period, claim, 113-114
- Ex Officio* application after *Asturcom*, note on, 847-880
- assessment, 872-877
- case, 849-853
 - AG's opinion, 852-853
 - ECJ judgment, 850-852
 - facts, 849-850
- international arbitration, 870-872
- procedural autonomy, 854-864
 - consumer law in, 860-861
 - effectiveness - from standard to balancing, 857-859
 - res judicata*, 861-862
 - subjective *v.* objective effectiveness, 862-864
- public policy, 864-870
 - consumer law provision as national public policy, 868-870
 - European/National Public Policy of European Origin, 866-868
 - European public policy, 864-865
- Ex officio* application, ECJ 4 June 2009, 307-316
- earlier cases, 308

judicial activism and legal base,
 310–312
 in consumer cases, 312
 general approach, 310–311
 National Court's duty, 313–316
 effect on proceedings, 315–316
 fairness determination, 314–315
 judicial activism guidelines,
 313–314
*Pannon GSM Zrt. v. Erzsébet
 Sustikné Györfi*, 307–316
 proceedings, 308–309

F

Feststellung der Vaterschaft und
 mögliche Lösungswege, 368–383

G

German and Austrian Paternity Case:
 comparative perspective, 317–318

I

Italian legal scholar reactions on
 DCFR and ACQP, 227–258
B2C v. B2B contracts, 232–233
 commentaries, 232–257
 contract formation, criticisms,
 242–243
 'acceptance by conduct,' 243
 acknowledgment of receipt, 242
 binding force of unilateral
 promises, 242–243
 debate, 229–231
acquis communautaire, 230
 Pisa and Ferrara Conferences,
 229
 'political CFR,' 231
 'Stockholm Programme,' 231
 European context, 228–229
 formal requirements, 237–241
 information duties, 239–241
 'legislative indifference'
 principle, 237–238

signature issues, 238–239
Textual form, 238
 'unilateral non-alterability,' 239
 'good faith' and 'reasonableness,'
 233–236
 Article 6:301 (2) ACQP, 234
 Article II-1:104 DCFR, 234
 Directive MiFID No. 2004/39,
 235–236
 pre-contractual dealings, 235
 subsidiarity principle, Article
 5(2) EC Treaty, 236
 non-discrimination principle, 241
 non-negotiated terms, 248–250
 Article 6:301 ACQP, *B2B*
 contracts, 249–250
 structural differences, 248–249
 non-performance, 252–257
 'avoidable loss,' 254
 compensation, 256–257
 contract termination, 254–255
 damages for loss, 255
 'grey rule,' 253
 right to damages, Article 8:401
 ACQP, 252
 substitute transaction, 253–254
 'twin track' rules, 252
 notions of consumers and business,
 236–237
 performance of obligations,
 250–251
 notion of *abus de droit*,
 250–251
 'reasonable expectations,' 251
 right of withdrawal, 243–248
 Article 5:105 ACQP, 246
 Article II-5:105 DCFR, 246–247
 'economic unit' v. 'commercial
 unit,' 247
 general framework, 244
 'nature' of, 244–245
 'Rome I' Regulation (No. 593/
 2008), 245

Italian legal system on Consumer Protection, 143-154
 Articles 36, 152
 Articles 64, 149-150
 Articles 130, 150-152
 European Convention on Human Rights (ECHR), 144
 free of charge by repair/
 replacement, 148-149
 Article 130, 149
 buyer protection, 148-149
nullity for protection of consumers, 145-146
 O'Callaghan's opinion, 143-144
 remedies, Consumers' Code, 152
 reversing *ubi jus ibi remedium* in Civil Law, 143-154
 right of withdrawal, 146-148
 Article 1373 Civil Code, 148
raison d'être, 147

J

The jurisdiction of choice, 1243-1257
 English contract law, 1248-1252
 parol evidence rule, 1248
 problems of contract
 interpretation, 1248-1251
 unfair terms in consumer contracts, 1252
 freedom of contract, 1246-1247
 business deal, 1247
 civil code, 1246
 mandatory rules, 1246
 good faith standard, 1244-1245
 contractual interpretation, 1245
 predictability of legal outcome, 1244
 procedure, 1253-1257
 as 'adversarial' and
 'inquisitorial,' 1255
 in English Courts, described, 1253
 principle of adversarialism, 1256

'skeleton arguments,' 1253
 witness identification, 1254
 substantive law, 1244-1252
 English contract law, 1248-1252
 freedom of contract, 1246-1247
 good faith standard, 1244-1245

L

La Contestation de Paternité et ses Enjeux, 341-354
 La subrogation réelle au cas d'un fidéicommiss de residuo, 579-588
 Liability for suicide under Spanish Tort Law, 649-665
 contributory negligence, 657-665
 causation and scope of liability, 661-662
 damage, 657-660
 duty to mitigate damage, 664-665
 free suicidal decision, 662-664
 criminal law approach, 650-652
 foreseeability issue, 655-657
 insurance law, 652
 labour law *v.* tort law, 652-655
 attribution, 652-653
 basis of liability, 655
 social security, 653
 statutory presumption, 653-654
 time limits, 655
 suicides data, 650
 Limited Property Rights, 259-284
 concurrence of ownership, 259-284
 DCFR rules, 281-282
 extinction, 272-278
 English law, 278
 French and Dutch law, 272-274
 German law, 274-278
 first draft, BGB, 263-264
 Füller's statement, 262
 Knöchlein's thesis, 263
Konsolidation, 261, 263
 models to creation, 265-272

- Dutch law, 269-270
- English law, 270-272
- French law, 265-266
- German law, 266-269
- relevance, European Property Law, 278-281
 - Financial Collateral Arrangements Directive, 280
 - personal right, 279
 - right of Euro-Mortgage, 280-281
 - right of *Grundschild*, 280

O

- Overdraft facilities, credit cards and European consumer protection, 1181-1241
 - behavioural approach of consumer finance, 1201-1209
 - financial distress, 1208-1209
 - homo economicus*: imperfect or bounded rationality, 1201-1204
 - hyperbolic discounting, procrastination or myopia, 1206-1208
 - wishful thinking, over-optimism and underestimation, 1204-1206
- Belgian Law of 14 July 1998, 1230-1231
- consumers' pattern (ab)use, 1213-1214
- 'core exclusions,' 1231-1237
 - annual management fee, 1234
 - Article 10 CCD, 1235
 - Article 4(2) of the Directive, 1232
 - contractual language, 1237
 - Directive 93/13/EC, 1233-1234
 - negative and a positive information requirement, 1236
 - plain and intelligible requirement, 1236-1237

- credit facilities, 1182
- debit interests under the Belgian Law of 14 May 2001, 1238-1240
- and disclosure, 1217-1231
- for dummies, 1187-1190
 - acquaintance with a particular type of credit., 1187-1189
 - two for the price of one?, 1189-1190
- European Consumer Credit Directive, 1217-1230
 - description, 1217-1218
 - disclosure works, 1222
 - enabling comparisons, 1225-1227
 - European Standard Information Form, 1220
 - monthly statements, 1228-1230
 - multi-layer protection regime, 1224-1225
 - 'one size fits all approach,' 1222-1224
 - overdraft facilities' light regime, 1220-1222
 - personalized information, 1227
 - point of sale disclosure, 1227-1228
 - policy makers' inability, 1218-1219
 - pre-contractual disclosure, 1219-1220
- and fairness, 1186-1217
- legislative intervention, 1214-1217
- market distortions, 1213
- markets for consumer finance, 1191-1201
 - asymmetric information, creditor and borrower, 1192-1193
 - continuously and fast changing character, 1199-1200
 - credit as complex product, 1193-1197

- financial conservatism, 1197-1199
- informed minority of borrowers, 1200-1201
- ‘search costs’, 1199
- and over-indebtedness, 1209-1213
 - debt, 1212-1213
 - financial obesities, 1211-1212
- routine transactions, 1183
- ‘spiral of debt’ risk, 1183
- ‘transaction function,’ 1182-1183

P

- Principes fondamentaux et transposition des directives communautaires Le contrôle du Conseil constitutionnel sur les lois de transposition des directives communautaires, 487-499
- Principle of good faith in decisions of Chinese courts, 953-981
 - application in Case Law (1999-2006), 968-979
 - burden of proof, 976-979
 - contract – culpa in contrahendo, 968-972
 - contracts – performance and interpretation, 972-975
 - contracts – post-contractual liability, 975-976
- Article 219 of Republican Civil Code, 961-968
 - current legal scenario, 962-966
 - Hetong Fa*, 966-968
 - notion of good faith, 961-962
- current legal scenario, 962-966
- Hetong Fa*
 - adaptation or termination of a contract, 968
- Article 42, 969-972
- Article 92, 975-976
- Articles 60 and 125, 972-975

- enumeration and definition of fundamental principles, 966
- UNIDROIT model, 967
- translation of the concept, 955-961
- Private Enforcement of EU Competition Law, 757-771
 - background, 760
 - damages as an enforcement tool, 762-764
 - Case Law from the ECJ, 762-763
 - Commission Policy, 763-764
 - position of, 761-762
 - punitive damages, 764-767
 - as an enforcement tool in the US, 766-767
 - Commission’s Proposals, 765-766
 - definition, 764-765
 - ECJ’s Ruling in Manfredi, 766
 - US-style punitive damages in EU Competition Law, 767-770
- Prohibition of abuse of rights, principle of, 1121-1154
 - ‘abuse test,’ 1133-1138
 - direct taxation, 1137-1138
 - establishment, 1133-1135
 - VAT cases, 1135-1136
 - ‘abusive’ exercise, 1122
- applicability development by ECJ, 1149-1151
 - applicable to European contract law, 1151
 - applicable to private law relations, 1149-1151
- Article 267 TFEU, 1123
- principle of good faith, 1145-1149
 - as an application, 1145-1146
 - recognition of limitative function, 1146-1149
- recognition in the case law of the ECJ, 1128-1139
 - abusive or fraudulent exercise, 1133-1138

- broad conception, 1128-1129
 - emergence of limits, 1129-1133
 - implicit recognition, 1138-1139
- recognition in the laws of Member States, 1125-1128
 - Article 1382 and Article 1134 (3) Civil Code, 1126
 - limitative function, 1127
 - pragmatic solutions, 1125
 - ‘subjective test’ and ‘objective test,’ 1127
- recognition of limitative function, 1146-1149
 - ECJ case law, 1147-1148
 - European contract law, 1149
 - Member States, 1146-1147
- role in codified European contract law, 1139-1153
 - Acquis* principles, 1142-1143
 - applicability development by ECJ, 1149-1151
 - DCFR, 1143-1145
 - evolution, 1139-1141
 - explicit reference, 1151-1153
 - PECL, 1141-1142
 - principle of good faith, 1145-1149
- Union law concept, 1123-1125
- Proportionality in Tort Law, 1155-1179
 - all or nothing approach, 1164-1165
 - applying *conditio sine qua non* test, 1164
 - ‘proportional liability theory,’ 1165
 - amount of compensation, 1158
 - applying proportional liability in lung cancer cases, 1167-1170
 - Articles 6:99 BW and 6:101 BW, 1167, 1169
 - Dutch Court of Appeal judgment, 1169
 - Nefalit/Karamus* case, 1168
 - population level figures, 1169
 - traditional all or nothing approach, 1168
 - causation requirement, 1157
 - contributory negligence, 1172-1174
 - Dutch Civil Code (BW), 1157
 - Dutch *Nefalit and Karamus* case, 1156
 - Dutch *v.* English approach, 1174-1175
 - English *Badger v. Ministry of Defence* case, 1156
 - liability for asbestos-related lung cancer, 1158-1159
 - lung cancer, asbestos-related, 1159-1160
 - probability of causation and experts role, 1170-1172
 - assessment formula, 1171-1172
 - Health Council of the Netherlands, 1170
 - ‘the multiplicative effect of smoking,’ 1171
 - proof of causation, 1163-1164
 - claimant right for requirement of causation, 1163
 - procedural rules, 1164
 - ‘the balance of probabilities approach,’ 1163-1164
 - proportional liability: Dutch solution for multiple causation, 1165-1167
 - compensating damage in proportion, 1165
 - ‘the least unreasonable’ approach, 1166-1167
 - requirement of causation, 1161-1163
 - Article 2:102 and Article 3:201 PETL, 1163
 - Article 6:98 BW, 1162
 - aspects, 1161
 - principle of *conditio sine qua non* test, 1161-1162

R

Die Rechtsstellung des biologischen
Vaters im Lichte der
Entscheidungen, 384-389
Retour sur la loi applicable aux
intérêts moratoires, 177-183
Rezeption der westlichen
Zivilrechtswissenschaft im
modernen China, 901-913

S

Schweizerische Annotation zur
Inzidentfeststellung, 319-322
Security rights in property in Chinese
Law, 1005-1033
in bankruptcy proceedings,
1019-1020
bona fide acquisition of, 1030-1032
coexistence and priority of,
1020-1021
foreclosure, 1018-1019
mortgages, 1021-1029
on buildings under construction,
1021-1023
in buildings, vessels and aircraft
under construction,
1023-1024
creation of multiple, 1026-1027
floating charge, 1027-1029
in movables, 1024-1025
restriction on disposals,
1025-1026
no non-accessory security rights,
1014-1017
opposabilité aux tiers, 1011-1014
pledge, 1029-1030
principles of Chinese Property Law,
1007-1010
retention of title and lien, 1017
type, creation and transfer of,
1010-1011
State liability, 773-811
chain of command work, 800-802

comparative and historical
perspective, 780-793
enforcement of, 788-789
state and sovereign immunity,
780-788
theories of, 789-793
market pressure, 803
to monitor public bodies and
government branches, 799-800
out-of-court settlements, 809-810
to provide incentives, 793-797
to remove incentives, 797-799
and sovereign immunity, 774-779
aspects for avoid liability,
777-778
Coasean tradition, 775
fundamental questions, 779
incentive effects for individual
and state officials, 776-777
state as a defendant, 779
specialized courts, 804-809
capture, 807
characteristics, French system,
808-809
costs and benefits of, 805
court workload, 806
of state employees, 802-803
Suicide of injured employee: *Corr v.*
IBC Vehicles Ltd (2008)
an Irish perspective, 621-629
Civil Liability Act 1961,
621-622
contributory negligence,
627-629
foreseeability, type of injury,
623-625
novus actus interveniens,
625-626
thin skull principle, 625
annotations, 589-599
aspects français, 607-611
case history, 589
claim for damages, Greece, 613-619

- distance in time, harm *v.* death, 613–614
- provisions, 613
- suicide, tortfeasor, 614–619
- contributory negligence, 596–599
 - Article VI.-5:102 DCFR, 597
 - suicidal tendencies, 598
- from Danish perspective, 601–606
 - foreseeability, 601–602
 - Industrial Injuries Act, 602–603
 - tort law, 603–606
- employer's liability, Dutch Law, 631–647
 - Article 6:101, 644–646
 - background, 631–632
 - Causa Intervenients*, 637–639
 - contributory negligence, victim, 640–643
 - damage and negligence relationship, 635–636
 - duty of care, 632–633
 - victim's behaviour, 634–635
- from Polish perspective, 667–679
 - contributory negligence issue, 672–675
 - employer's liability, 667–668
 - foreseeability issue, reparable damage, 668–670
 - suicide and causation, 675–677
 - third-party claims, 678–679
 - Volenti Non Fit Iniuria*, 671–672
- scope of liability, 591–596
 - v.* causation, 591–593
 - limitation factors, 593–596
- under Spanish Tort Law, 649–665
 - contributory negligence, 657–665
 - criminal law approach, 650–652
 - foreseeability issue, 655–657
 - insurance law, 652
 - labour law *v.* tort law, 652–655
 - suicide data, 650
- suicide after accidents, 590–591

- under Swiss social law, 681–684
 - facts, 681
 - proposed solution, 682–684
 - social security system, 681–682

U

- Un aperçu du droit chinois des contrats, 915–938
- Unity of private law, 1055–1078
 - civilian tradition, 1059–1061
 - German Civil Code, 1060–1061
 - property law, 1061
 - codification, 1077–1078
 - cross-sections between law of organizations and transactions, 1066–1077
 - autonomy and regulation integration, 1074–1076
 - governance and law as infrastructure, 1076–1077
 - internal and external perspective, 1073–1074
 - long-term relationship, 1070–1073
 - nexus of contracts, 1066–1069
 - from formal concept to dynamic concept, 1055–1078
 - law of obligations, 1061–1063
 - Article 1134 Code Civil, 1062
 - computation of damages, 1062–1063
 - rules, 1062
 - private autonomy and regulation, 1063–1066
 - capital market law, 1063–1064
 - contract law, 1065–1066
 - governance definition, 1066
 - regulatory order, 1064–1065
 - use of party autonomy, 1063–1066
 - Proprium*, 1057–1059
 - practice, 1059
 - theory, 1057–1059

V

Vague notions in Chinese Contract

Law: *Heli* case, 939-951

balancing standard, 946-948

comparative evaluation, 946-947

concerns of economic efficiency,
947

contractual liability, 947-948

insurance premium, 948

rights and obligations, 946

in contemporary court practice,
943-946

Article 9 of the Economic

Contract Law, 946

insurance contract case, 945

post-Mao legal reforms, 943-944

rural production responsibility
contracts, 944

guiding opinion of the People's

Supreme Court (SPC), 948-950

breach of contract, 950

handling contract disputes, 948

interpretations, 949

Heli as transplanted notion,
940-941

and legal discourses, 939-940

linguistic glimpse into the concept,
941-943

legal discourses, 943

meaning compound, 942

W

Weaker Party Protection in European Contract Law, 729-756

analysis, protective rules,
735-743

anti-discrimination law, 748-749

current developments, 749-752

fundamental principles, 732-735

implications, 753-756

information duties, 736-738

basic requirements, 736-737

pre-contractual duties to inform,
737-738

law of sureties in the Member States,
745-746

limited scope of consumer law,
743-745

mandatory provisions as powerful
tool, 739

right of withdrawal, 740-741

transactions involving minors,
the mentally disabled, or the
elderly, 747

unfair contract terms legislation,
741-743