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Editorial

ERPL and Its Advisory Board

1. The diligent reader of this review may have observed that it has at least three governing bodies: the Editorial Board, the Advisory Board and the Publishers. The Editorial Board is the body in charge of daily matters. It convenes twice annually, but does a lot of business by e-mail. The pivotal person here is Dr Jessy Emaus from Utrecht University, who carries the title of Managing Editor. Ever since the function was inaugurated, researchers from Utrecht University have fulfilled this position: Dr Christoph Jeloschek (now an attorney), Dr Chantal Mahé (now a lecturer at the Free University Amsterdam), Dr Martien Schaub (likewise lecturing at the Free University Amsterdam), Dr Marie-José van der Heijden (now an attorney) and now, as I mentioned, Dr Jessy Emaus. It is a time-consuming occupation, and therefore, the term taken up by our Managing Editors usually is no longer than two or three years. What the *Publishers* do is quite obvious. In this issue, I would like to introduce to the readers the *Advisory Board*. First, as one may judge from reading the list of names, this is a body of academics and practitioners from various European nations. Not all nations are represented; on the other hand, some large jurisdictions have more than one member in the Advisory Board. Also, the list is not restricted to the European Union.

Among the members are some comparative lawyers who have a world-wide reputation: who does not know Ole Lando and his *Principles of European Contract Law* as well as Rodolfo Sacco and his *legal formants,* to mention two of our nonagenarians. Other members are still in the beginning of their career, but no less promising. They do cover quite a number of legal domains. Dean Spielmann, for instance, is an expert, as President of the European Court of Human Rights, in – you might guess it – human rights. Hector MacQueen is 'our man' on intellectual property. This means, and I now turn to the tasks of the members of the Advisory Board, that whenever the Editorial Board has to assess manuscripts that are slightly beyond our competence, we may turn by way of peer review to the Advisory Board or one or more of its members.

The Advisory Board does not have regular meetings. It is only when some other event is taking place that we may use the occasion to come together. The last such occasion was a meeting of the European Law Institute in Brussels, where twelve members of the Advisory and Editorial Boards showed up.

Members of the Advisory Board may also act pro-actively. On the Editorial Board, only a limited number of European jurisdictions is represented. We therefore heavily rely on suggestions as to domestic cases to be annotated, interesting papers published in languages that are unavailable to most readers and then will be rendered into one of our three languages (English, French, German),

reports of conferences and book reviews. What occasionally may happen is that members of the Advisory Board participate in a conference, the proceedings of which will be published by the convenors with a Publishing House, with the chance that the book will not be sold in many copies. A better option, for both such convenors and *ERPL*, is when such proceedings are published in *ERPL*, by way of special issue of *ERPL* or on a stand-alone basis.

Readers of *ERPL* have no special position in our editorial structure, but they are of course most welcome to come up with suggestions either to us or to someone on the Advisory Board.

2. Now coming to the current issue, we are glad to announce the publication of the papers given at a conference in honour of Hugh Beale, Professor of Law at the Universities of Warwick and Oxford, former Law Commissioner, former member of the Commission on European Contract Law and member of the *ERPL* Advisory Board. The papers were given at a conference held in Lincoln's Inn, London, on 23 May 2014 by Larry Di Matteo (Florida), Marco Loos (Amsterdam), Hans Schulte-Nölke (Osnabrück), Matthias Storme (Leuven) and Christian Twigg-Flessner (Hull). The papers which are more in the form of a tribute to Hugh Beale, such as those by the Lord Chief Justice, Lord Thomas of Cwmgiedd, and Hugh Collins (Oxford) are not reproduced.

3. In his paper, Larry Di Matteo (Florida) provides us with an American perspective on the Works of Hugh Beale. The author sees Hugh Beale's scholarly work and work on law reform as an example of the functional approach to legal scholarship and law reform. It sounds very reassuring when an American argues that a clear analysis of common law cases remains the key skill for understanding the law. The transparency principle is one of the main assets of German legislation on unfair contract terms. Does the principle also apply on the European level? Yes is the answer by Marco Loos (Amsterdam), who however adds that EU law does not provide for a clear sanction for the breach of the transparency principle. The impact of the principle in the EU therefore is limited. Hans Schulte-Nölke (Osnabrück) in his paper explains why the Common European Sales Law (CESL) provides that terms in a B2B contract should be subjected to a specific judicial unfairness test applicable uniquely to non-negotiated terms. The paper also purports to explain why certain contract terms, in particular those on the price, the main subject matter and individually negotiated terms should not be subjected to this test. Matthias Storme (Leuven) analyses the scope of CESL, which as a regulation is to be part of domestic law, while at the same time remaining EU law. The question whether CESL was validly chosen is not determined by national law, but by CESL. On the other hand, CESL does not deal with illegality issues. The author then continues with some demarcation disputes. Christian Twigg-Flessner (Hull) analyses the cross-border nature of contracts to be covered by the CESL. He argues in favour of re-evaluating many of the substantive provisions of CESL.

4. In a short reply, Hugh Beale gives a response to the comments by DiMatteo, Loos, Schulte-Nölke, Storme and Twigg-Flesner. With his customary modesty, he suggests that others had a leading role (as well) in the elaboration of CESL and the proposals of the Law Commission. This may be the case, but those who participated in the various conferences will recall Hugh Beale's wealth of cases with which he always knew to illustrate his point.

5. Just before this issue of *ERPL* went into the press, Hugh Beale was honoured by a volume of essays.[1] After a preface on 'Hugh Beale and the Law Commission' by Lord Carnwath, Lord Toulson and Tamara Goriely, the volume consists of twenty-five essays divided over six parts. In the part on *Legal history*, Paul Brand (Oxford) writes about 'Merchants and the Legislative Process in Thirteenth Century England: The Making of the Statutes of Acton Burnel (1283) and Merchants (1285)'. Catharine MacMillan sketches 'Contract Terms between Unequal Parties in Victorian England'. Part II is titled 'Law reform'. It contains three papers: by Andrew Burrows (Oxford) on 'Alternatives to Legislation: Restatements and Judicial Law Reform', Eva Lomnicka (King's College London) on 'The Impact of Rule-Making by Financial Services Regulators on the Common Law: The Lessons of PPI' and Christian Twigg-Flesner with 'Some Thoughts on Consumer Law Reform: Consolidation, Codification or a Restatement?'

With seven essays, the part on *English contract law* is the largest of the collection. Michael Bridge (University College London) writes on 'Freedom to Exercise Contractual Rights of Termination', Mindy Chen-Wishart (Oxford) on 'Regulating Unfair Terms' and Eric Clive (Edinburgh) thought of the nice title 'Time to Reflect on the Right to Reject' for his analysis. Michael Furmston (Singapore) reports on 'Universal Terms in Contract', Thomas Krebs (Oxford) has 'Some Thoughts on Undisclosed Agency', Ewan McKendrick (Oxford) 'Innominate Terms Revisited' and Simon Whittaker (Oxford) writes about 'Variation and Termination of Consumer Contracts'.

The second largest part of the volume, as might have been expected, is devoted to *European contract law.* Martijn Hesselink (Amsterdam) analyses 'Unfair Prices in the Common European Sales Law', Ole Lando, *still going strong*, 'CISG and CESL: Simplicity, Fairness and Social Justice', Wolf-Georg Ringe (Copenhagen Business School) 'The Law of Assignment in European Contract Law', Jacobien Rutgers (Free University Amsterdam) 'Unfair Terms in Consumer Contracts', Stefan Vogenauer (Oxford) 'General Principles of Contract Law in Transnational Instruments' and Reinhard Zimmermann (Hamburg) on 'Interest for Delay in Payment of Money'.

The part on *Security and financing* contains papers by Roy Goode (Oxford) on 'The Assignment of Pure Intangibles in the Conflict of Laws', Louise Gullifer

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1 Louise Gullifer & Stefan Vogenauer (eds), *English and European Perspectives on Contract and Commercial Law/Essays in Honour of Hugh Beale* (Oxford: Hart, 2014), 424 pp.

(Oxford) on 'Compulsory Central Clearing of OTC Derivatives: The Changing Face of the Provision of Collateral' and Anna Veneziano (Teramo) on 'European Secured Transactions Law at a Crossroad: The Pitfalls of a "Piecemeal Approach" to Harmonisation'. Sarah Worthington raises the question, 'How Secure is Security?'

Finally there is a part with the title *Trends in transnational and European commercial law*. Christian von Bar (Osnabrück) returns to his old love: 'The Numerus Clausus of Property Rights: A European Principle?' Bénédicte Fauvarque-Cosson (Paris II) writes about 'New Principles in the Legal World: The Hague Principles on the Choice of Law in International Commercial Contracts'. Arthur Hartkamp (Nijmegen) is the third Dutch author in this volume who was inspired by the Unfair Contract Terms directive. 'Ex Officio Application in Case of Unenforceable Contracts or Contract Clauses: EU Law and National Laws Confronted' is the title of his paper.

6. We are particularly happy with the last paper in this issue of *ERPL*, submitted by Piia Kalamees and Karin Sein, both from Estonia. This stems from two reasons. First, one of the major consequences of the enlargement of the European Union with ten new Member States has been that these jurisdictions now participate in the European discourse, which is to the benefit of their law and law reform. This is helped by papers such as the current one that bring Estonia in line with other Member States. Second and, perhaps, even important, papers written by native speakers from the new Member States, with languages that often are less accessible among one another and for the older Member States, now find their way to other parts of Europe, thus enabling the old jurisdictions to profit from our new colleagues. The paper by the two Estonian authors is an excellent example of such cross-fertilization. Not only do they focus on Estonian – as well as German and European law – but they also analyse an issue that has traditionally divided lawyers in Europe: whether price reduction as a remedy should be allowed to a limited number of traditional areas of breach or to breach of any type of contract.

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