

Subject Index

A

Advisory Board and ERPL, 155–158
 American perspective on the works of
 Hugh Beale, 159–178
 contracts and commercial law,
 161–166
 modernization of secured
 transactions, 163
 Principles of European Contract
 Law (PECL), 162–163
 reforms, English common law,
 162
 research activities, 161–162
 theoretical-practical scholarship,
 164–166
 European private law, 166–173
 CESL, 172–173
 common and civil laws, 169–171
 formulation, 166–167
 interpretations, 171
 PECL and DCFR/CFR, 167–169
 reflections, 160–161
 transatlantic perspectives, 173–178
 analysis, Unfair Contract Terms
 Act, 173–174
 company security interests, 177
 Consultative Report, 178
 contract theory and practice, 174
 efficiency of standard term
 contracting, 175–176
 inequality of bargaining power,
 174–175
 reforms, British secured
 transactions law, 177
 regulation, 175
 security interests, 176–177

B

Belgian law, 101–108
 analysis, 105
 interpretation of the contract,
 106–108
 recognition, 102–105

Belgium's rethinking of the Article 9
 UCC System, 959–1025
 conditions for enforceability,
 1007–1016
 automatic: purchase money
 security interests, 1016
 control, 1015–1016
 overview, 1007–1008
 possession, 1015
 registration or filing, 1008–1014
 dealing with secured credit, 961–964
 enforceability of security interest
 against third-party claimants,
 1004–1016
 conditions for enforceability,
 1007–1016
 meaning of *Erga omnes*
 enforceability, 1004–1007
 enforceability of security interest
 inter partes, 984–1004
 default situation: seizure by
 unsecured creditor as benchmark,
 985–986
 secured creditor execution rights
 outside of bankruptcy: self-help
 and appropriation, 987–1004
 meaning of *Erga omnes*
 enforceability, 1004–1007
 challenging transfers of collateral,
 1006–1007
 concept, 1004–1005
 priority in case of insolvency,
 1005–1006
 methodology, 965
 nature of collateral, 967–969
 movable - immovable, 967
 tangible - intangible, 968–969
 obtaining security interest in goods,
 970–984
Inter partes, 970–971
 Nemo plus and right to transfer
 property rights, 971
 security agreement, 971–984

- value given, 984
- research context and working hypothesis, 964–965
- robustness of security interests, 1016–1023
- issues of identification of collateral: value tracing, 1021–1023
- overview, 1016
- purchases in ordinary course of business and/or in good faith, 1016–1021
- scope of possible collateral, 966–970
- different ways to view scope of application, 966
- by nature of collateral, 967–969
- by time of acquisition, 969–970
- scope of possible secured debts, 970
- secured creditor execution rights
 - outside of bankruptcy: self-help and appropriation, 987–1004
- corporeal assets, 987–1002
- debt claims: accounts, 1002–1004
- security agreement, 971–984
- consensualism: agreement between parties as validity requirement, 971–974
- description of collateral, 977–984
- evidentiary requirements, 974–975
- signing: authenticating security agreement, 975–977
- security in movables revisited, 959–1025
- security interest, 966

C

- CESL, cross-border transactions and domestic law, 231–250
- Brussels-I Regulation, 238
- challenges, 245–247
- CISG test, 234–235
- commercial law, 234
- constitutional framework, EU treaties, 243
- Emrek v. Sabranovic case*, 241–242
- evolution, EU Consumer and Contract Law, 232

- jurisdictions, 235, 236
- limitation, 244–245
- optionality, 247–248
- Pammer v. Schlüter case*, 239–241
- place of business, 242
- private international law, consumer contracts, 233–234
- qualitative requirements, 248–249
- regulation, 242–243
- Rome-I Regulation, 238
- scope, 234
- substance of, 243
- trader and consumer, 235–236
- trader's activities, 236–238
 - jurisdiction, 236–237
 - measures, 237–238
 - regulation, 237
 - scope, 237
- Change of circumstances (Section 313 BGB) for financial crisis, 85–99
- contractual risk distribution, 94–95
- damages claim for breach of advisory duty, 85–88
 - bank's advisory duty, 86
 - complexity and risk of the Portuguese swap, 86–88
- foreseeability, 95–96
- good faith, 97–99
- infringement of public policy (Section 138 BGB), 88–92
- financial services, 88
- German law, 88
- requirements and swap contracts, 89–90
- reservations to the risk comparison approach, 90–92
- speculative contracts, 93
- swap contract, 96–97
- Common European Sales Law (CESL), 251–261
- dispute resolution and contract, 252–253
- drafting, 251–252
- mirror contractual liability, 255–256
- PECL and DCFR, 252
- scope of application, 253–255

transparency of standard terms, 256–261

- B2B contracts, 258–259
- consumer contracts, 257–259
- implications, 259, 260
- negotiations, 260–261
- provisions, unfair terms, 256
- requirements, 257
- unfairness, 259

Constitutionalization of European Private Law, 797–827

Article 19(1) of the TEU, 801

direct horizontal effect of

- fundamental rights, 823–826
- Article 16 of the Charter, 826
- Article 157 of the TFEU, 824
- Directive 93/13 on Unfair Contract Terms, 825

EU and Member State positive obligations to protect fundamental rights, 817–823

- Article 3(1) of Directive 93/13, 821
- Article 8(1) of Directive 2000/43, 823
- Commission v. France* (French road blockades) case, 818
- Directive 2000/43 on race discrimination, 822
- Marckx* case, 817–818
- Promusicae* case, 819–820

fundamental rights scrutiny of EU Law and National Laws, 805–812

- Article 5(2) of Directive 2004/113, 808–809
- Article 31(2) of the EUCFR, 811
- Article 52 of the EUCFR, 807
- Directive 2014/17 on Mortgage Credit, 807
- Directive 2007/64 on Payment Services, 807
- Küçükdeveci* case, 809–810
- legislative measures, 805–806
- Mangold* case, 810
- Recital 45 of Directive 2008/48 on Consumer Credit, 806

general framework, 802–805

- Article 47(1) of the EUCFR, 804
- Article 51(1) of the EUCFR, 802
- direct* and *indirect* horizontal effect, 804–805
- EU fundamental rights, 803
- Herresthal’s methodological approach, 800
- interpretation and application of EU Law and National Laws, 812–816
- judgments in *Sky Österreich*, 816
- Omega* case, 813–814, 815
- Promusicae* case, 812–813
- Schmidberger* case, 814
- sources of EU fundamental rights, 799

Consumer ‘alternative dispute resolution’ (ADR) and regulatory techniques, 829–873

ADR, CDR, and ODR mechanisms, 832

combining CDR and regulatory redress, 862–865

- activities to achieve results, 862–863
- information feedback, 864
- issue identification, 863
- regulatory scrutiny, 864–865

consumer ADR, 833–836

- CDR schemes, 833
- EU-level ODR platform, 834
- payment protection insurance (PPI) products, 836
- UK’s Financial Ombudsman Service (FOS), 835

consumer claims, 831–832

Danish Consumer Ombudsman, 845–846

enforcement in generic areas, 852–857

- competition, 855–857
- consumer enforcement: consumer markets, 853–855
- environmental protection, 852–853

enforcement policy: redress as market regulation, 837–841

- criminal compensation order technique, 839

- Law Commission suggestion, 838–839
- Macrory Review of regulatory enforcement penalties, 840
- reasons, 837–838
- Regulatory Enforcement and Sanctions Act 2008 (RESA), 840
- European dimensions, 868–870
- mass collective redress, 829–873
- outstanding issues, 870–871
- overseeing delivery of redress, 867–868
- redress powers: typology, 841–845
 - to approve a compensation scheme*, 843
 - to bring a collective action*, 842
 - to bring public enforcement proceedings*, 842
 - create a restoration scheme*, 842
 - to have power to accept an undertaking to make redress*, 844
 - to interrupt an enforcement process*, 844–845
 - to order an infringer to negotiate*, 843
 - to order redress to be paid*, 842
 - propose a compensation scheme*, 842
 - to refer a proposed compensation scheme to a court for approval*, 843
 - to refer assessment of loss to the court*, 842
 - to remove illicit profits*, 841
 - to take into account*, 844
- regulatory action, 866–867
- regulatory redress, 836–845
 - enforcement policy: redress as market regulation, 837–841
 - redress powers: typology, 841–845
- series of shifts in policy, 871–873
- toolbox and settlement approach, 857–862
- Consumer Ombudsman, 859
- Deferred Prosecution Agreements (DPAs), 858
- interest rate hedging products (IHRPs), 860
- voluntary arrangement, 861
- UK Regulators, 846–852
 - financial services, 846–848
 - gas and electricity, 849–850
 - railways, 850–852
- Consumers' remedies for
 - non-conforming goods after *Weber and Putz*, 689–704
 - costs' division, 700–702
 - German viewpoint, 695–698
 - non-conforming swimming pools, 698–700
 - remedies for non-conformity, 691–692
 - termination and damages?, 702–703
 - Weber and Putz* cases, 692–695
 - Article 3 of the Consumer Sales Directive, 693
 - consumer's reimbursement, 694
- Contractual discretion and limits of free movement law, 875–897
 - definition, freedom of contract, 876–877
 - freedom of contract in union *acquis*, 878–880
 - Article 16 of Charter, 878
 - Commission v. Italy*, 880
 - principle of freedom of contract, 879
 - individual contractual preferences and contractual discretion, 881–886
 - ability to effectively exercise, 885–886
 - freedom of contract and individual contractual preferences, 883–885
 - horizontal application of free movement law, 881–883
 - non-mandatory contract law rules and contractual discretion, 887–896
 - approach based on *Alsthom Atlantique*, 887–889

- effect of rules rather than parties' contractual discretion, 893–896
 - as residual rules, 889–893
- Contractual penalties in French Law, 297–307
 - notion at crossroads, 305–307
 - practical application, 301–303
 - specific legal areas and regulations, 303–305
 - textual provisions and definitions, 299–301
- Contractual penalties in German Law, 285–296
 - condition, 290–291
 - debtor's behaviour to be impelled, 289–290
 - dependent penalty clauses, 289
 - independent penalty clauses, 290
 - functions, 286–287
 - compensation, 287
 - deterrence, 286–287
 - exclusion of injunctions, 287
 - and guarantees, 288–289
 - liquidated damages clauses, 295–296
 - payment, 290
 - penalty and liquidated damages clauses, 288
- Reduction of the Amount of the Penalty (s. 343 BGB), 293–294
 - requirement of an agreement, 289
 - restrictions, 292–293
 - invalidity of the secured obligation, 292
 - Penalty Clauses Contrary to Public Policy (s. 138 BGB), 292
 - penalty clauses in standard business terms, 293
 - statutory prohibitions, 292–293
 - specific performance, damages and avoidance, 294–295
- Contractual penalties under common law, 327–353
 - American law of liquidated damages, 329
 - commercial enterprises and free market, 328
 - enforcement of penalties, 338–352
 - analysis, 338
 - BLAE analysis and assumptions of LAE, 345
 - BLAE, LAE and reforming, 349–352
 - flawed assumptions of LAE, 342–345
 - international trade, 338
 - LAE case for eliminating the penalty rule, 341–342
 - law and economics failure, 340–341
 - modern international commercial transactions, 339–340
 - penalties to overcome cognitive biases, 346–349
 - inefficiency of common law's, 330–338
 - anti-penalty rule, 330
 - Chaos II: American Uniform Commercial Code, 336–338
 - Chaos I: The Law of Liquidated Damages in American Common Law, 335–336
 - commercial law, 330
 - common law abhors forfeiture and penalty, 331–334
 - courts, 331
 - 'general' common law of contracts, 331
 - liquidated damages, 329
 - private autonomy principle, 329
- Convention for the International Sale of Goods (CISG), 217–229
 - applicable rules in CESLR, 220–222
 - drafting, 220
 - regulation, 221–222
 - Rome I Regulation, 220
 - applications, 222–223
 - consequences of Art. 4(3) TEU and the doctrine of *effet utile*, 224–226
 - EU Charter of Fundamental Rights, 227–228
 - Inländerdiskriminierung*, 228–229
 - mandatory rules of national law, 223–224

- principle of effectiveness, 226–227
 - regulation, 219
 - scope of, 218
 - supremacy of the CESLR as EU Law, 219–220
- D**
- Damages for loss caused by Cartel, 459–470
 - antitrust law/rules, 461
 - Directive 2014/104, 464–466, 470
 - effectiveness, TFEU Art. 101(1), 461–462
 - infringement of EU competition rules, 462–464
 - Commission, 463–464
 - Francovich*, 462
 - impact, Union law, 462–463
 - Member States and domestic law, 464
 - principle of effectiveness, 462
 - principles of equivalence, 463, 464
 - private conduct, 462
 - procedural rules, 462
 - ‘umbrella pricing’, 464
 - victims, 462
 - Kone* judgment, 460, 468–469
 - nullity sanction, Art. 101(2), 461
 - opinion of AG Kokott, 466–468
 - private and public enforcement, competition law, 460–461
 - regulation, EEC Arts. 85 and 86, 461
 - ‘umbrella pricing’, 461, 469
 - Die Vertragsstrafe im Brennpunkt der Rechtsvergleichung*, 283–284
 - Domestic law of European legislation on payment systems, 945–957
 - ‘abstract’ nature of payments in PSD and pre-existing domestic rules, 951–955
 - Article L-133-22 of the *Code monétaire and financier*, 954
 - Italian *decreto legislativo* n. 11 of 27 January 2010, 953
 - achievements and missed opportunities, 955–957
 - European Union (EU) payment systems, 945–946
 - indirect effects on, 945–957
 - Payment Services Directive (PSD), 946
 - performance and discharge in payment systems, 947–948
 - performance of payment service and liability in PSD, 948–951
 - Art. 75 PSD, 948–949
 - Directive 2000/35/EC, 950
- E**
- EU Fundamental rights on private relationships, 29–46
 - direct *versus* indirect horizontal application, 31–32
 - judicial activism and domestic law, 34–36
 - Mangold and Küçükdeveci Rulings*, 40–45
 - analysis, 44–45
 - CJEU, 40–41
 - principle of non-discrimination on grounds, 43
 - right to annual paid, 42
 - workers’ right to information and consultation, 42–43
 - model of horizontal effect, 36–40
 - Article 51(1) of the Charter, 37–39
 - European Court of Human Rights (ECtHR), 39–40
 - fundamental rights *versus* principles, 36–37
 - object and outcome of judicial review, 33–34
 - EU law and national civil procedure law, 567–587
 - consumer law, 573–576
 - Article 6(1) of that Directive, 573
 - ex officio* doctrine of the CJEU, 576
 - Océano* case, 574
 - crossroads of civil procedure law and private international law, 569–571
 - EEX Regulation, 569–570

- Kalimijnen* case, 570
- ECHR and Charter of Fundamental Rights, 568–569
 - Article 47 of the Charter, 569
 - Article 6 of the ECHR, 568–569
- Europeanization of national civil procedure law, 568
- Ex Officio* application EU Law, 573–577
 - consumer law, 573–576
 - costs, 577–578
 - free choice of lawyers and legal expenses insurance, 578–579
 - intellectual property rights, 576–577
- external fragmentation, 584–585
- internal fragmentation, 582–584, 585–586
 - European procedural regulations, 582–583
- Rampion* case, 583
- invisible pillars, 571–573, 579–581
 - Article 81 of the Treaty on the Functioning of the European Union (TFEU), 580
 - ex officio* application, 572–573
 - principle of loyalty, 572
- uncertainty, 581–582
- EU property law developments, 437–458
 - classification of objects, CJEU, 450–452
- Common European Sales Law (CESL), 439
- Consumer Rights Directive, 439
- Cross-Border E-Conveyancing (CROBECO) project, 452–454, 457–458
 - land registrars, 452
 - lex rei sitae*, 454
 - nationality, 453–454
 - private initiatives, 457–458
 - registrability of foreign deeds, 453
 - technological developments, 452
 - transactions, immovable property, 452–453
 - transfer of ownership, 453
- elements, 438, 439
 - and EU contract law, 440–441
 - and EU free movement law, 441–443
 - capital, 442–443
 - English and German company, 441–442
 - floating charge, 441
 - internal market, 441
- institutions, 438, 457
- judicial cooperation in civil matters, 454–457
 - Lisbon Treaty, 454–455
 - Rome IV regulation, 456–457
 - succession regulation, 455–456
- legislation, 438, 443
- optional instrument, 445–447
- regulation, 439, 457, 458
- terminology, 444
- TFEU Art. 345, 448–450
- Europeanization of contract law, 715–749
 - average consumer, 717–722
 - connection between UPCD and contract law, 721
 - meaning of average consumer, 718–720
 - significance of ECJ decision in *Kásler*, 722
 - uniform European standard, 717–718
- case of Directive 2005/29/EC on Unfair Commercial Practices, 715–749
- Directive 2005/29/EC on Unfair Commercial Practices (UCPD), 715
- duty of information, 732–741
 - cases of materiality and significance of invitation to purchase, 739–741
 - in Contract Law, 734–736
 - indirect manner of introduction, 733–734
 - introduction of general pre-contractual duty of information, 732

- materiality of information, 736–738
 - misleading omissions and contract law, 738–739
 - duty to trade fairly, 722–732
 - as applied to contractual parties, 729–730
 - introduction of pan-European duty to trade fairly, 722–723
 - lack of uniform European good faith in contract law, 727–729
 - meaning of, 723–726
 - purpose of general clause and functions, 726–727
 - significance of judgment in *Perenico*, 730–732
 - remedies, 741–749
 - contract law consequences of unfair commercial practices, 742–743
 - development of national contract laws, 743–746
 - inertia selling, 748–749
 - lack of individual and private law remedies prescribed by UCPD, 741–742
 - right of withdrawal, 748
 - right to conformity, 746–747
 - unfair contract terms, 747
 - European law of ‘contractual penalties’, 355–383
 - civil and common laws, 369–370
 - civil law systems, 367–369
 - convergence in civil law systems, 363–367
 - good faith, 366–367
 - judicial review admitted with nuances, 364–365
 - retrospective and objective test, 365
 - interpretation of contractual wording, 356–363
 - and business-to-consumer (B2C) contracts, 357–359
 - comparative law studies, 356
 - damages, 361–363
 - diversity of functions reflected in legal terminology, 359–361
 - legal diversity emerging from praxis in business-to-business (B2B), 357–359
 - supranational level, 371–381
 - agreed payment for non-performance, 373–375
 - ‘desire for convergence’, 371
 - penal clause, 371–372
 - stipulated payment for non-performance, 375–381
 - UNCITRAL rules, 372–373
- I**
- Interest rate swaps (IRSs), 121–132, 133–148
 - contract, 121–132
 - excessive onerousness and OTC, 124–128
 - financial crisis, 121
 - Italian case law, 128–132
 - Italian legal doctrine, 122
 - legal ‘toolbox’, 122
 - termination of contract for excessive onerousness, 122–124
 - legal configuration and evolution in Spanish contract law, 134–136
 - Portuguese case, 133–134
 - Spanish legal system, 137–141, 141–148
 - financial crisis, 140–141
 - Portuguese case, 141–148
 - Rebus sic stantibus* clause, 137–140
 - Interplay between public and private enforcement in European Private Law, 525–549
 - British Financial Sector, 546–548
 - Competition and Markets Authority (CMA), 548
 - Consumer Redress Scheme (s. 404(1) FSMA), 547
 - Financial Conduct Authority (FCA), 546

- Financial Ombudsman Service (FOS), 547
 - Financial Standards Authority (FSA), 546
 - incentives and deterrents at play, 530–532
 - stakeholders in enforcement process, 531–532
 - victims' perspective, 530–531
 - incentive structures within
 - enforcement mechanisms, 540–542
 - capture, 540–541
 - principal–agent problems, 541
 - mixes between private and public law enforcement, 543–546
 - allocation of risks, 544
 - availability of investigative powers, 543
 - danger of error costs, 544
 - possibility of obtaining damages, 543
 - rational apathy problem, 545
 - remedy 'compensation', 545
 - model of law enforcement, 527–532
 - goals and players, 528–529
 - incentives and deterrents at play, 530–532
 - traditional public *versus* private law enforcement, 532–542
 - administrative costs, 541–542
 - incentive structures within enforcement mechanisms, 540–541
 - victim's incentives, 533–540
 - free riding, 536–537
 - information asymmetry, 537–540
 - rational apathy *versus* frivolous lawsuits, 533–536
- J**
- Judicial unfairness test for B2B contracts, 195–216
- Articles 79 *et seq.* CESL, 205–210
 - pre-formulated terms, 207
 - protection of individual contract parties, 205–209
 - protection of 'the market', 205, 206, 209–210
- commutative fairness, 204
- customers, 197
- distributive justice, liberal policy, 204
- effects of judicial intervention, 205
- formation and validity, 199
- freedom of contract, 202–203
- incorporation and transparency, CESL, 200
- limitation of the test to non-negotiated terms, 215
- 'non-negotiated terms', 196–197
- procedural fairness, 203
- scope of judicial unfairness controls, 210–213
 - classical notion of standard terms, 211–212
 - exception for big contracts/contracts, 212–213
 - exception for terms supplied by the other party, 211
 - exceptions for price and subject matter, 210
 - pre-formulated terms, 211
 - standardization of contracts, 210
- substantive fairness test, 200–201
- uncertainty on quality of goods/services, markets, 197–198
- unfair contract terms, 198–199
- yardstick for the fairness test of non-negotiated terms, 213–215
 - Article 86(1)(b) CESL, 214
 - assessment, 215, 216
 - assumptions of contract law, 213
 - guarantee of the contract's correctness, 213
 - open-ended individual negotiations, 213
 - reasonable and honest parties, 213–214
- L**
- La culture juridique française* (French legal culture), 471–478
- Law and time, 1–3

Les contrats commerciaux OHADA dans une perspective congolaise, 47–80

Liability of mother company subsidiary, 385–413

competition law, 409–412

corporate social responsibility (CSR), 387, 412, 413

criminal responsibility, 391

damages, 389

direct and indirect, 388–389, 412

English law, 402–409

Chandler v. Cape, 402, 403

grounds for piercing the corporate veil, 408–409, 412

tort of negligence, 402–407

vicarious liability, 407–408

establishment, 387

French and Belgian law, 391–402

abuse of right, 397–399

Civil Code, Article 1382, 392–394, 411

concealment, 399–400

creation of false appearances, 401–402

fraud, 400–401

general and vicarious liability, 392

legal persons, 391

subsidiaries, vicarious liability, 396–397

tort and contract law, 391

vicarious liability for employees, 394–396

insolvency, 388, 413

International Labour Organization (ILO), 386

jurisdiction, 390

limitation, 387–388

responsibility, 390

subsidiary, 388, 390

victims of multinational enterprises, 386

M

Multilateral and case-oriented approach to teaching and studying of comparative law, 927–944

benefits of the presented approach, 943–944

case-oriented comparative law teaching, 937–943

acquiring knowledge of

fundamental characteristics

from different legal cultures, 942

challenges due to the diversity of languages, 942–943

methodological abilities, 938–942

examples from international and

comparative legal practice, 934–937

from national and bilateral method to

multilateral comparative law

methodology, 930–934

objective, 933–934

range of jurisdictions to be

compared, 931–932

search for common principles of law, 933

transnationalization or

globalization of trade and legal

practice, 932–933

P

Penalty clauses in Italian Law, 309–325

consumer contracts, 322–323

functions, 312–315

award of punitive damages, 314

civil law sanctions, 313

contractual relationship and

quantify damages, 315

interpretation, 313

judgments, 314, 315

private law sanctions, 312, 313

recognition and enforcement of US judgments, 312

historical overview and definition, 310–311

power to reduce the agreed sum, 317–322

excessive sums, 320–321

Interpretation of the Italian

Supreme Court: Reduction Ex Officio, 317–320

relevant moment, 321–322

- relationship to other remedies, 315–317
 - damages, 316–317
 - specific performance, 315–316
- relation with other agreed remedies:
 - the case of ‘*caparra confirmatoria*’, 323–324
- Portuguese Supreme Court’s Decision of 10 October 2013, 109–119
 - bank’s argument, 110
 - contractual allocation of risks, 114–119
 - financial crisis, 109
 - Portuguese Civil Code, 109
 - rejection of the theory of *Imprévision*, 111–114
 - swap contract, 110, 111
- Prescription proposal for common
 - European Sales Law, 751–775
 - agreements concerning prescription, 774–775
 - CESL: reduction and unification of periods, 761–764
 - Article 179 CESL, 762
 - Article 180 CESL, 761
 - Article 5 of Directive 1999/44/EC, 763
 - effects of prescription, 772–773
 - incidents affecting periods of prescription, 764–772
 - interruption, 769–771
 - postponement of expiry, 771–772
 - suspension, 765–769
 - object of prescription, 755–757
 - Article 178 CESL, 755
 - limitation period, 756
 - from PECL and DCFR to CESL, 751–755
 - CESL approaches, 752–753
 - Optional Instrument, 754
 - periods of prescription and commencement, 757–764
 - CESL: reduction and unification of periods, 761–764
 - in comparative perspective, 757–761
 - periods of prescription in comparative perspective, 757–761
 - Limitation Convention 1974, 759–760
 - PECL and DCFR, 759, 760
 - Spanish Commercial Code, 758
 - suspension, 765–769
 - beginning of judicial proceedings, 766–767
 - case of *force majeure*, 767–768
 - repair or replacement of defective good, 769
- Price reduction, contractual remedies, 263–280
 - analysis, 265
 - Article III.-3:101, DCFR, 264
 - claim for specific performance, 272–274
 - Common European Sales Law (CESL), Art. 106, 264
 - Convention for the International Sale of Goods (CISG), Art. 45, 264
 - debtor’s liability, 279
 - difficulties, 269–271
 - Estonian and German sales laws, 276
 - Estonian Law of Obligations Act (LOA), 270, 276–277
 - force majeure*, 266
 - general remedies, 267–269
 - German Civil Code (BGB), 276
 - obligation and compensation, damages, 274–275
 - penalty for late payment, 279
 - right to withhold performance, 278–279
 - self-help remedy, 265
 - successive performance, 280
 - and termination, 277–278
- Private lawyers to reconsider
 - compensatory principle in age of administrative enforcement?, 551–565
 - administrative enforcement preferred by policymakers, 553–555
 - analysis, 557–561

- dangers of (in)dependence, 557–558
- ineffectiveness of public watchdogs, 560
- internal tensions, 558–559
- lack of expertise, 559–560
- lack of resources and loss of expertise, 558
- private enforcement is discouraged, 561
- Dutch Cases, 555–557
 - meat quality, 555–556
 - privacy, 556–557
- rethinking compensatory principle in private law, 561–565
 - potential for abuse/controlling private enforcers, 564
 - private claims for compensation, 562
 - private enforcement is costly, 564–565
- Public and private enforcement in field of unfair contract terms, 589–619
 - concept of unfair contract term, 591–593
 - consequences of unfair contractual term, 610–613
 - link between individual and collective redress, 611–612
 - no protection against consumer's will, 610–611
 - restitution of amounts paid without justification, 612–613
 - impact of class actions, 618
 - private and public enforcement mechanisms, 594–598
 - administrative and penal sanctions, 597
 - assistance of consumer protection associations in individual disputes, 597–598
 - non-binding nature of unfair contractual terms, 594–595
 - prevention of continued use of unfair contract terms, 595–597
 - provisions on enforcement mechanisms incorporated in the UCTD, 594–598
 - three categories, 594
 - private enforcement : non-binding nature of unfair contract terms, 598–615
 - audi alteram partem*, 606
 - beginning of *ex officio* doctrine, 603–604
 - consequences of unfair contractual term, 610–613
 - impact of unfairness, 614–615
 - interim conclusion, 613–614
 - non-binding nature of unfair contract term, 598–603
 - obligation for national courts to invoke unfairness of contract term, 603–615
 - obligation to invoke the unfairness, 604–606
 - procedural autonomy and *ex officio* doctrine, 606–610
 - private (and public) enforcement through injunctions, 615–616
 - public enforcement mechanisms: the Belgian approach, 616–618
 - Art. XV.3 Code of Economic Law, 617
 - Art. XV. 61 Code of Economic Law, 618
 - 'level 3' penal sanction, 617
 - standard terms, 590
- Public and private enforcement of European private law, 481–490
- Public and private enforcement of European private law in energy and telecommunications sectors, 649–688
 - energy sector, 652–664
 - Germany: ups and downs of private enforcement, 653–658
 - United Kingdom: rise of (public and private) regulatory enforcement, 658–664

- enforcement in multilevel systems, 650–652
 - attempt to strengthen private enforcement, 651
 - distribution of enforcement powers, 652
 - less visible development in strengthening private enforcement, 651
 - Member States' procedural autonomy, 650–651
- France: negotiated regulation and judicial enforcement, 676–681
 - Art. L121-84-9 Consumer Code, 677
 - enforcement mechanisms, 679
 - lack of sector-specific enforcement tools, 680
 - number of complaints, 678
- Germany: ups and downs of private enforcement, 653–658
 - Article 29 of the Act against Restraints of Competition (GWB), 653
 - enforcement activity of BNA, 654
 - German Transmission System Operator (TSO)'s network tariffs, 654–655
 - Section 315 BGB, 656–657
 - Section 32(3) EnWG, 657
 - Section 58(3) EnWG, 653
- Italy: regulation by administrative adjudication, 665–676
 - competition law enforcement, 670
 - cost allocation, 669
 - EU regulatory framework, 668
 - infringement proceedings, 665–666
 - interconnection agreement, 672
 - interplay of Agcom's dispute resolution powers, 673
 - observations, 675–676
 - regulatory enforcement, 671
 - scope of NRAs' powers, 667
 - types of interventions, 674
- from optimal mixes to optimal hybrids, 681–688
 - changes in public and private enforcement, 687
 - energy and telecommunications enforcement, 688
 - regulation and compensation, 687
- telecommunications sector, 664–681
 - Body of European Regulators for Electronic Communications (BEREC), 664
 - France: negotiated regulation and judicial enforcement, 676–681
 - Italy: regulation by administrative adjudication, 665–676
 - significant market power (SMP), 664
 - United Kingdom: rise of (public and private) regulatory enforcement, 658–664
 - 11A–11H Electricity Act 1989, 660
 - annual list of Strategic Enforcement Priorities, 660
 - CMA Guidance, 661–662
 - Competition Appeal Tribunal (CAT), 663
 - Consumer Rights Bill, 663
 - 27G–O Electricity Act 1989, 662
 - Third Energy Package, 659
 - UK Competition Network (UKCN), 661
- Public and private enforcement of
 - European private law in financial services sector, 621–647
 - concept of European private law, 622
 - extra-judicial enforcement, 638–640
 - Consumer Credit Directive, 638
 - Financial Ombudsman Service (FOS), 639
 - Financial Services Complaints Commission, 640
 - Mortgage Credit Directive, 638
 - Regulation on Consumer ODR, 638
 - interplay between public and private enforcement, 640–645
 - complementarity, 641–643
 - hybridization, 643–645
 - judicial enforcement, 634–638

- Article 33 of the PSD I, 637
 - Genil v. Bankinter*, 635
 - MiFID I, 634
 - MiFID II, 636
 - no strong link between private law and public enforcement in EU law, 628–632
 - Consumer Credit Directive, 630
 - Office of Fair Trading (OFT), 631
 - Payment Services Directive I (PSD I), 628
 - Payment Services Directive II (PSD II), 629
 - private enforcement, 633–640
 - extra-judicial enforcement, 638–640
 - judicial enforcement, 634–638
 - public enforcement, 622–633
 - Markets in Financial Instruments Directive I (MiFID I), 623
 - no strong link between private law and public enforcement in EU law, 628–632
 - strong link between private law and public enforcement in EU law, 623–628
 - towards European supervision private law, 632–633
 - strong link between private law and public enforcement in EU law, 623–628
 - Art. 19(1) of the MiFID I, 623
 - Art. 48(2) of the MiFID I, 624
 - Committee of European Securities Regulators (CESR), 625
 - EU Regulation on Credit Rating Agencies (CRA III), 625
 - European Insurance and Occupational Pensions Authority (EIOPA), 625
 - European Securities and Markets Authority (ESMA), 625
 - European System of Financial Supervision (ESFS), 625
 - Financial Services Authority (FSA), 624
 - MiFID II, 626
- R**
- Remediation of contaminated sites and assessing liability of innocent landowner, 1071–1119
 - CJEU’s decision on Dutch Law, 1083–1086
 - conclusions, 1085–1086
 - Dutch Soil Protection Act, 1083–1085
 - CJEU’s decision on English Law, 1096–1107
 - application of environmental liability directive, 1104–1107
 - conclusions, 1107
 - English legislation for remediating contaminated land, 1097–1101
 - introduction, 1096–1097
 - liability of owners of contaminated land, 1101–1104
 - CJEU’s decision on Flemish Law, 1086–1091
 - Flemish Soil Decree, 1086–1091
 - comparative law perspectives, 1083–1119
 - CJEU’s decision on Dutch Law, 1083–1086
 - CJEU’s decision on English Law, 1096–1107
 - CJEU’s decision on Flemish Law, 1086–1091
 - impact of the decision on Spanish law, 1107–1117
 - Italian perspective on the Temporal Applicability of Directive 2004/35, 1117–1119
 - La portée de la solution en droit français*, 1091–1096
 - decision of the court, 1080–1083
 - Article 16 of Directive 2004/35, 1081
 - objectives of ELD, 1082

ECJ 4 March 2015, C-534/13,
Ministero dell' Ambiente / Fipa Group Srl., 1071–1119

facts behind the case and legislative framework, 1075–1080

Article 16 of Directive 2004/35, 1077

different liability schemes, 1076–1077

‘Environmental Code’, 1075–1076

‘environmental damage’, 1076

Environmental Liability Directive (ELD), 1080

‘polluter pays’ principle, 1078

Flemish Soil Decree, 1086–1091

conclusions, 1090–1091

distinction between historical and new soil contamination, 1086–1087

distinction between obligation to remediate and liability, 1087–1088

exoneration from obligation to remediate, 1088–1090

liability, 1090

obligation to remediate, 1088

framing the problem, 1071–1075

CERCLA, 1072

Directive 2004/35 on Environmental Liability, 1074–1075

potentially responsible parties (PRPs), 1071–1072

Proposal for a Directive on Environmental Liability, 1074

White Paper on Environmental Liability, 1073

impact of the decision on Spanish law, 1107–1117

clarifications of CJEU Judgment of 4 March 2015 in context of Spanish Law, 1114–1115

concept of contaminated land, 1108–1110

introduction, 1107–1108

private law remedies to demand restorative measures, 1115–1117

question on the applicable law in case of contaminated land, 1113–1114

responsible parties, 1110–1112

scope of remedial measures, 1112–1113

Italian perspective on the Temporal Applicability of Directive 2004/35, 1117–1119

Resuscitating EU product liability law, 899–915

Advocate General’s Opinion, 903–904

analysis, 906–913

causation and burden of proof, 910–911

impact on national legislation implementing the directive, 906–908

relationship between product liability law and product safety law, 911–912

scope of the judgment, 908–910

Boston Scientific Medizintechnik GmbH v. AOK Sachsen-Anhalt and Betriebskrankenkasse RWE (Joined Cases C-503/13 and C-504/13), 899–915

Council Directive on Product Liability, 900

The Development of Product Liability, 900–901

factual background, 902–903

judgment, 904–906

Article 6 of the Product Liability Directive, 905

Article 9(1) of the Product Liability Directive, 906

national product liability laws, 913–914

Rethinking the Law School: the wizard from Leyden speaks, 709–714

S

Supply chain liability of multinational corporations, 415–436

agreements, 416

Alien Tort Claims Act (ATCA), US, 417

Chandler v. Cape, 434–436

code of conduct, 418

degradation of land, 416

European Centre for Constitutional and Human Rights (ECCHR), 418

guidelines, Organisation for Economic Co-operation and Development (OECD), 417

human rights, 416

integrity measures, 417

international tort law, 423–424

jurisdiction, human rights violations, 417–418

potential negative impact, 419–420

potential positive impact, 420–423

responsibilities, 435–436

structures, 419

subsidiary, 416–417

third parties liability, 424–434

acts or omission committed by subsidiaries, 427–434

organizational torts, 425–427

vicarious, 425

tortious behaviour of third parties, 418–419

Supreme Court of Portugal–10.10.2013, 81–84, 149–151

beyond the risk, 150–151

change of circumstances, 149–150

decision, 82–84

interest rate hedging products (IRHPs), 81

swap contracts, 81

Symposium über den Einfluss des deutschen Rechtsdenkens in Mitteleuropa, 1121–1123

T

Tenancy and right to housing, 777–795
duration of contract, 785–791

dichotomy between tenant's stability and owner's burden, 786

duration of lease: general rules, 785–786

landlord's right to recover house, 786–787

limited duration of tenancy, 786

tenant's right to anticipate

termination of lease, 789–791

transfer of ownership in duration of tenancy, 787–789

overview, 778–779

protective rules for tenants, 779–785

advantages of tenancy, 780–781

attempts to rebalance property and tenancy, 784–785

landlords' position, 781

mandatory rules in benefit of tenants, 781–784

rent, 791–795

justification of market rules, 793–794

limited control of rent and market rules, 791–793

need of social policies in case of low incomes, 794–795

The Law in Quest for Purity: Tracing Things or Men?, 925–926

Transformation of enforcement in European Private Law, 491–524

conceptual clarifications, 493–501

actors of enforcement, 497–499

European Regulatory Private Law, 496–497

multilevel dimension, 499–501

the new private law, 494–495

traditional private law, 493–494

consequences, trends, and effects, 518–524

impact on the law, 523–524

institutional consequences, 519–521

trends towards centralization, fragmentation, and deformalization, 521–523

- infringements, 503–505
 - beyond product safety,
 - competition, environmental protection, and financial services, 504–505
 - distinction between minor and major infringements, 503
- institutions, 505–512
 - ADR/ODR turn into substitutes for courts, 508–509
 - agencies turn into quasi-courts, 511–512
 - collective entities turn into enforcement institutions, 506–508
 - courts turn into quasi-agencies, 509–510
 - individuals turn into agents, 506
- from lawmaking to law enforcement, 491–493
- parameters of enforcement transformations, 501–502
- remedies, 513–518
 - from individual to collective, 514–516
 - from judicial protection to managing enforcement, 517–518
 - from judicial to administrative, 516–517
- use of three distinguishing categories: infringements, institutions, and remedies, 502–503
- Transparency standard contract terms, 179–193
- Common European Sales Law (CESL), 189–192
 - commercial contracts, 191
 - consumer contract, 190
- Draft Common Frame of Reference (DCFR), 191
 - sanction for breach of principle, 192
 - surprising terms, 191–192
 - trader's obligations, 189–190
- European legislation, 192
- Unfair Contract Terms Directive, 181–189, 193
 - draft, 180
 - EU legislation, 182
 - general unfairness test, 183
 - lack of transparency, 193
 - Member States, 183
 - regulation, Art. 5, 179, 182–183
 - requirements, 180–181
 - sanctions, breach of transparency principle, 184–189
 - surprising terms, 183–184
 - trader's obligations, 181–182
- Transposition of Consumer Rights Directive, 5–28
 - consumer contracts, regulations 2013, 20–25
 - 2012 and 2013 regulations into English contract law, 23–25
 - style and content of the 2013 regulations, 21–23
 - UK Government's, 20
 - 'continental' influences, 28
 - domestic legislation, 27
 - European consumer law, 16
 - Government's apparent approval, 7
 - 2013 guiding principles for EU legislation, 8–16
 - Article 288(3) TFEU, 8
 - civil law systems, 13
 - copy out, 15
 - directive, 12
 - double-banking, 14
 - factors, 9
 - global market, 11
 - gold-plating, 10
 - government's approach, 10–11
 - implementation, 9
 - infringement proceedings, 11
 - implementation: Article 19, 17–20
 - infringement proceedings, 26
 - stand-alone regulations, 17

supplementary guidance, 17
transparency, 6

U

Uniform application of European
private law, 1027–1070
constructing cultural prism,
1035–1056
inner prism, 1045–1051
outer prism, 1038–1045
refractions of light, 1051–1056
what is culture anyway?, 1035–1038
direct effect: feeding cultural prism,
1064–1067
Europeanization of private law,
1056–1063
creating British cultural grid,
1059–1061
‘eyes’ of Britain, 1061–1063
good faith in the EU, 1057–1059
European legal culture: re-educating
the educated, 1067–1069
inner prism, 1045–1051
creating constellations, 1046–1047
Japanese constellations, 1047–1051
rules of game, 1045–1046

Japan as case study, 1030–1035
Japanese cultural ideals, 1034–1035
Japanese Minpo Code, 1033–1034
transplantation theory, 1031–1032
outer prism, 1038–1045
analysing Japan, 1043–1045
cultural dimensions, 1039
individualism *versus* collectivism
(IDV), 1039–1040
indulgence *versus* restraint (IVR),
1041
long-term orientation *versus*
short-term orientation (LTO),
1041
masculine *versus* feminine (MAS),
1040
power distance (PDI), 1039
three patterns of law, 1042–1043
uncertainty avoidance (UAI),
1040–1041
preliminary conclusions, 1063–1064
refractions of light, 1051–1056
cultural eyes, 1052–1053
magical eye, 1053–1054
mythical eye, 1054–1055
perspectival eye, 1055–1056