Subject Index

A
Alternative Dispute Resolution (ADR), 174–183
monitoring framework in the EU, 176–183
competent authorities as regulators, 182–183
mapping competent authorities, 180–182
rationale for, 176–179
Althen v. Secretary of Health & Human Services, 92
APIs (Application Programming Interface), 865
Aventis Pasteur v. O’Byrne, 139
Axo v. Nosa
Belgian, punitive damages and U-turn, 676
from Dutch Law, 681–689
current position, 684–688
impact for legal practice, 688–689
Italian decision in European context, 682–684
punitive damages, 681–682

B
Belgian perspective, punitive damages, 674–680
consequences for, 677–680
traditional antipathy, 674–676
U-turn in Axo v. Nosa, 676
Big data approach, personalization of information, 297–309
IT and disclosure mechanisms, 297–298
method of analysis
broader legal context, 304–307
consumer behaviour, 302–303
doctrine insights, 303–304
solve problems, 307–309
technology approach, 301–302
theoretical framework, 298–300
Blockchain-based smart contracts
cross-border issues, 835–839
data protection issues
absence of middle men, 834–835
difficulty of controller identification, 829–831
GDPR framework, 831–832, 840–842
privacy-by-design options, 847–851
right to deletion, 846–847
transparency, 844–846
evolution, 758–759
formation process, 759–761
capacity, 768
consideration, 765–767
inclusion and validity of standard terms, 769–770
intention to create legal relations, 767–768
offer and acceptance, 762–765
governance issues
data processing implications, 832–833
Internet platforms, 839–840
individuals as data subjects and as controller, 843–844
Private International Law, 759–761
property right issues, 873–876
contractual techniques, 881–882
lawyer’s skill requirements, 881
security right issues, 876–877
states and public authorities’ role, 877–881
transactional layers, 866–867
technological problems, 867–869
terminological problems, 867
vending machine, example, 757
WEF Report on, 833–834
Blockchain Ordinance, 874
Blockchain Ordinance, 874
Blockchain. See also. Blockchain-based smart contracts

Blockchain-based smart contracts
computer codes, 756–757
cross-border issues, 835–839
data protection issues
absence of middle men, 834–835
difficulty of controller identification, 829–831
GDPR framework, 831–832, 840–842
privacy-by-design options, 847–851
right to deletion, 846–847
transparency, 844–846
evolution, 758–759
formation process, 759–761
capacity, 768
consideration, 765–767
inclusion and validity of standard terms, 769–770
intention to create legal relations, 767–768
offer and acceptance, 762–765
governance issues
data processing implications, 832–833
Internet platforms, 839–840
individuals as data subjects and as controller, 843–844
Private International Law, 759–761
property right issues, 873–876
contractual techniques, 881–882
lawyer’s skill requirements, 881
security right issues, 876–877
states and public authorities’ role, 877–881
transactional layers, 866–867
technological problems, 867–869
terminological problems, 867
vending machine, example, 757
WEF Report on, 833–834
Blockchain Ordinance, 874
Blockchain Ordinance, 874
Blockchain. See also. Blockchain-based smart contracts
definition, 856–857
electronic transacting platforms, 855–856
ideological issues
decentralization, 860–863
openness, 863–864
immutability, 865–866
as ledgers, 864–865
main divisions
permissioned, 859–860
permissionless, 858–859
Breath of contract, non-pecuniary loss, 515–535
alleviation of distress
added value, 528
‘objective’ added value, 529
‘subjective’ added value, 529–531
anxiety, mental distress and disappointment, 534–535
classification of cases
contracts aimed at promisee, 526–531
incidental result, 531–535
concept of, 516–517
defensibility of compensation
assumption of risk, 523
fears of floodgates, 525
foreseeability, 523
higher costs of contracting, 524–525
problems of proof, 521–522
risk of excessive awards, 524
infringement of personality rights, 531–532
infringement of *Prætium Affectionis*, 532–533
physical inconveniences, 533–534
rights, duties, and wrongs, 517–521
*Buck v. Attorney Genera*, 320–321
*Bunge Corporation v. Tradax S.A.*, (1981), 620
Burden of proof, causation, 61, 71

C
*Caledonia North Sea Ltd v. British Telecommunications plc*, 18
*Canada Steamship v. R case*, 9

CESL. See Common European Sales Law (CESL)
*Chen Xiuqin v. Wei Xilin*, 47–48
China, smart contracts
Bitcoin regulations, 925–928
blockchain technology, 923–924
challenges and responses to challenges, 928–939
emerging technologies, 924–925
forms of application, 922
regulatory efforts, 939–941
Chinese Case Law, 45–49
*Chen Xiuqin v. Wei Xilin* case, 47–48
general provisions of civil Laws of 2017, 49
*Liu Xiang v. Life Style Newspaper* case, 46
*Marlene Dietrich* case, 46–47
*Wang Sulan v. Tu Men & Zhu Dongli* case, 48
Chinese Civil Code, 42–45
constitution of the PRC, 42–43
on the legislative model, 44–45
personality rights under GPCL, 43–44
remedial perspective, 43
special book, 44
Common European Sales Law (CESL), 595
Comparative property law, global, 283–285
Conference Reports on smart contracts, 943–950
Consumer ADR quality in the EU, 171–195
ADR monitoring framework
competent authorities, 182–183
rationale for, 176–179
*vertical v. horizontal* approaches, 180–182
Directive 2013/11/EU and ADR, 174–176
loopholes in
competent authorities, 184–186
diverging monitoring behaviour, 187–189
non-certified ADR providers, 189-190
quality standards, 186-187
more effective approach
revising architectures, 191-192
revising monitoring rules, 192-194
upgrading quality criteria, 194

Consumer protection and products liability, 119-140
burden of proof
judgment of 21 June 2017, addition, 131-133
judgment of 21 June 2017, antecedents, 126-131
case, 123-126
European products liability law, 121-122
full harmonization, 133-139
Contract Law, 449-451
Contract law in a global world, 157-163
aims, 157-160
remarks, 162-163
two path-breaking agendas, 160-162
Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 693
Cornerstones of Tort Law, 165-166
Cuthbertson v. Lowes, 277-278
Cyber insurance contracts, Law and Economics, 371-397
empirical strategy, 395-396
insuring IT, cyber risk and potential of
characteristics of, 375-378
of insuring, 380-381
market failures, 378-380
prices and competition
adverse selection, 390-392
and competitors, 386-389
correlated risks and coverage, 382-386
moral hazard, 393-395
reverse adverse selection, 392-393
research, 406-420
results
coverage, 399-402
deductibles, 402-403
insurers and their strategies, 404-406
premiums, 398-399
requesting procedure, 397-398
risk reduction measures, 404

D
Damage caused by vaccines, remedies, 57-95
defective products, 58-60
issue in France
causation, 80-86
defectiveness, 86-88
issue in Germany
general Tort law, 74-75
under German law, 78
medical liability, 77
pharmaceuticals act, 69-74
social security law, 75-77
issue in United Kingdom
defectiveness of the vaccine, 91-93
Duncan Fairgrieve, 93-95
proof of causation, 90
statutory fund for vaccine damage, 89-90
Italian legal system, vaccines case law
product liability in vaccine cases, 65-69
proof of causation, Italian civil court, 61-63
public compensation fund, 60
public compensation fund, case law on, 63-64
Tort law for dangerous activities, 64-65

DCFR. See Draft Common Frame of Reference (DCFR)
De Cavel v. De Cavel, 563
Denial of restitution under Italian Law, 255-263
good morals as standard of conduct, 259-261
before Italian Court, 256-257
in pari causa turpitudine Rule, 257-259

969
Digital platforms
E-Commerce Directive 2000/31/EC, 904–908
European Commission on, 908–910
liability approaches
flexible-system approach, 913–916
retailer-liability approach, 916–919
Digital revolution, challenges for law in practice (Conference Report), 707–712
Artificial Intelligence and autonomous systems, 710–711
Blockchain-based technology, 709–710
data economy, 708
IoT, 711–712
Discussion Draft Provisions on digital platforms
assessment of liability, 913–916
content, 911–913
Divisible divorced v. unitary divorce, 568–573
Draft Common Frame of Reference (DCFR), 595
Drug-related injuries, compensation, 467–513
current schemes
in Denmark, 475–476
in Finland, 477–479
in Norway, 473–475
in Sweden, 471–473
liability of damage, 486–488
no-fault family, 501–503
Nordic countries
Case Study I: Vioxx, 482–484
Pandemrix vaccine and narcolepsy, 484–485
for pharmaceutical injuries, 508–513
purpose, 468–470
qualifications
fair distribution of damages principle, 506–507
fairness, 505–506
functionality, 506
transparency, 503–505
voluntary compensation system, 507–508
survey schemes
in Germany, 489–495
in Japan, 496–499
in New Zealand, 499–501
in Poland, 495–496
in UK, 488–489
Dutch law perspective, A xo v. Nosa, 681–689
current position, 684–688
Italian decision in the European context, 682–684
legal practice, 688–689
private international law perspective, 681–682
E
E.A. Ronaasen and Son v. Arcos Ltd case, 621
E-Commerce Directive 2000/31/EC
on digital platforms, 904–905
on types of providers, 905–906
Uber-Judgment of the CJUE, 907–908
EE Caledonia Ltd v. Orbit Valve Co Europe, 10
Electrical Workers v. Foust, 693
Enforcement of foreign decisions, punitive damages, 661–667
current admissibility in Italy, 667
situation in Italy, 661–663
tasks of civil liability and, 663–664
United Sections of Italian Supreme Court, 664–667
England, law on excuses for non-performance, 796–797
Ensuring data protection, private law
contract monitoring, 635–659
current data protection
private law instruments, 646–648
public law first, 644–645
data drives modern society, 636–637
data protection practices, 640–644
discussion, 657–659
GDPR, 637–640
sport trackers app
  appropriate business model, 654–655
  reciprocity and transparency, 656–657
strengthening data protection rights
  as part of contract law, 648–650
  software tools and governance, 650–654
*Escola v. Coca-Cola Bottling Co.*, 127
*Estin v. Estin*, 565–566
European Commission
  on digital platforms
    contractual role, 908–909
    liability assessment, 909–910
European contract law
  and Charter of fundamental rights, 581–586
  rules and principles in, 151–156
    *Adar and Sirena*, 152
    *Cauffman*, 153–154
    *Gómez Ligüerre*, 155–156
    *Navarretta*, 155
    *Patti*, 154–155
    *Poillot*, 152–153
    *Reich*, 153
    *Rutgers and Sirena*, 151–152
    *Whittaker*, 154
European Court of Justice (ECJ), 141–142
European patent law, 99–100
European products liability, 119–140
  burden of proof, 126–139
  the case, 123–126
  consumer protection and full harmonization, 133–139
  judgment of 21 June 2017, 126–131
  judgment of 21 June 2017 addition, 131–133
  synopsis of law, 121–122
European Union law
  approach to embryo, 432–434, 439–441
    Directive 98/44/EC and, 434–437
    of Human Rights, 437–439
    embryo’s status, 429–432
F
*Farley v. Skinner*, 530
Fitness check of EU consumer law,
  Conference Report, 703–705
  participants view, 704–705
  quality of research, 703–704
Foreign decisions, punitive damages
  civil liability, Astreintes, 663–664
  current admissibility of Italy, 667
  situation in Italy, 661–663
  united sections of Italian Supreme
    Court, 664–667
France
  law on excuses for non-performance, 795
French perspective, punitive damages,
  668–673
  civil penalties in French law, 671–673
  ‘natural’ environment, 669–671
G
*GAT v. LaK*, 102
General Data Protection Regulation
  (GDPR)
    concept, 750
    on controller identification, 829–832
    privacy-by-design requirements, 840–843
General Personality Rights v. Specific
  Personality Rights, 37–41
Germany
  law on excuses for non-performance, 794–795
  status of digital platform, 910–911
*Glebosky v. Fimez*, 674–676
*Goodisson v. Nunn*, 616
*Greenman v. Yuba Power Products, Inc.*, 127

H
*Hamilton Jones v. David & Snape (a firm)*, 527
*Hobbs v. London and South Western
  Rly Co.*, 533
I

Internet Broadcasting Corporation Ltd v. MAR LLC (t/a MARHedge), 12

Interpretation of contracts and smart contracts
automated tools, 783
blockchain technology
legal agreement analogue, 776–779
computer codes, use of, 781–782
traditional language, use of, 779–780
IoT (Internet of things), 711–712

J

Jamieson v. Watt’s, 278–279
Judicial cooperation, 333–340
bankruptcy and insolvency proceedings, 335–340
pre-trial discovery orders, 334–335
Jurisdiction clauses, international pre-marital agreements, 537–577
in contemplation of divorce, USA and Europe
post-crisis scrutiny, 553–556
pre-crisis scrutiny, 548–553
state law as substantive regulation, 541–548
party autonomy in family matters, 538–541
questions of jurisdiction
characterization of, 558–560
rules on jurisdiction, 564–577
state rules v. uniform rules, 556–558
rules
choice of forum agreements, 573–577
divisible divorced versus unitary divorce, 568–573
ex parte v. inter parte divorce, 564–568

K

Kingston v. Preston, 616–617
Knock-for-knock clauses, 3–29
agreements, 7–8
assessment and, 27–29
English law liability limitations
affecting contract validity, 15–17
English decisions, 17–18
general principle, 8–9
as matters of contract interpretation, 9–15
Nordic law liability limitations
criteria of assessment of validity, 20–26
freedom of contract, 18–20
Knock-for-knock principle, 4–5

L

Law of Contract choice, 445–448
Law of excuses
attributability of causes, 800–802
cause for non-performance, 798–800
limits of smart contracts, 803–804
for non-performance, debtor obligation, 792–794
specific categories, 802–803
Legal qualification of embryo, European multilevel protection, 421–443
Directive 98/44/EC and ECJ, 434–437
domestic approach, 441–443
embryo’s status, European systems, 429–432
embryo’s status under Italian law, 423–425
legal qualification of, 428–429
position of Courts, 425–428
European union approach, 432–434
human rights, 437–441
principal acts and decisions, 422–423
Les restitutions consécutives à l’annulation du contrat illicite, 265–271
Liability exclusions and limitation,
English law
English decisions, knock-for-knock, 17–18
and general principles, 8–9
issues affecting contract validity
breach of statutory duty, 15
public policy, 15–17

972
matters of contract interpretation  
    negligence, 9–11  
    wilful Misconduct, 11–15  
Liability limitations, Nordic law  
    freedom of contract 18–20  
    validity of, 20–26  
    commercial contracts between  
        professional parties, 20–21  
        exception, 24–25  
    importance of insurance, 23  
    imputation, 21–22  
    predictability, 24  
    standard contract conditions, 22–23  
    wilful misconduct, 25–26  
*Liu Xiang v. Life Style Newspaper*, 46

M  
Maritime contracts, 5  
Mortgage credit directive in Europe,  
    717–718

N  
New European patent landscape,  
    97–117  
    the CJEU, 109–111  
    EPC patent protection, 100–103  
    European Legal Order, 113–116  
    European patent law, 99–100  
    national courts, 111–113  
    UPC and unitary patent  
        challenges and expected entry into  
        force, 106–109  
    European patents without unitary  
        effect, 105–106  
    European patent with unitary  
        effect, 103–104  
    unified patent court, 104–105  
Non-pecuniary loss, breach of contract,  
    515–535  
    classification of cases  
        contracts aimed at promisee,  
        526–531  
        incidental result, 531–535  
        concept of, 516–517  
    defensibility of compensation  
        assumption of risk, 523  
    fears of floodgates, 525  
    foreseeability, 523  
    higher costs of contracting,  
        524–525  
    problems of proof, 521–522  
    risk of excessive awards, 524  
    rights, duties, and wrongs, 517–521

O  
Offshore contracts, 4

P  
Package Travel Directive, 916–919  
Parrillo v. Italia, 438  
*Patel v. Mirza*  
    Belgian perspective, 245–253  
    restitution under ‘Illegal’ contract,  
        246–251  
    second maxim, 251–253  
Italian law, 255–263  
    before court, 256–257  
    good morals decline, 259–261  
    *in pari causa turpitudine* Rule,  
        257–259  
Scott law perspective, 273–281  
    facts and, 274–277  
    unjustified enrichment, 277–280

Patent law, European, 99–100  
*Perera v. Vandiyar*, 534  
*Perry v. Sidney Phillips & Son*, 534  
Personality rights protection in China,  
    31–55  
    attributes of the human, 32–34  
    Chinese Case Law, 45–49  
    Chinese Civil Code, 42–45  
    general personality rights v. specific  
        personality rights, 37–41  
    legislative model issues, 55  
    violation of personality rights reme-  
        dies, 49–55  
    working definition and current legis-  
        lative, 34–37

*Petroleo Brasiliiero SA v. ENE Kos 1  
    Limited*, 693  
*Photo Production Ltd v. Securicor  
    Transport Ltd*, 12

973
Policy argument. See also Politics and aesthetics in non-American private law
American model for private law as an Individualist/Altruist Continuum, 604–606
choosing rules, 606–610
common policy analytic, 612–615
contractual performance, jurisdictions and legal questions

disparate policies on performance interruption, 615–624

described, 598–604

transnationalizing American Model, 610–611
transnational repertoire of, 625–629
Politics and aesthetics in non-American private law, 597–634
American model, 610–612
conditions/warranties, 612–615
contractual performance

disparate policies, 615–624
transnational repertoire of, 625–629

interruption at all, 616–618
interruption for distinct contracts, 622–624
Laissez-faire legal approaches, 598–604

model for study of argument

choosing rules through policy argument, 606–610
individualist/altruist continuum rules, 604–606
require proportionality in response, 621–622
require seriousness of breach, 618–621

Primus v. Roche, 102
Principle of comity in English private international law, 311–340
determination of jurisdiction

acts of foreign states, 320–323
foreign judicial process, 323–331

history of comity, 313–314
international treaties

interpretation of, 319
statutory interpretation, 316–318
judicial cooperation

bankruptcy and insolvency proceedings, 335–340
pre-trial discovery orders, 334–335

principle of comity, 314–316
recognition of foreign judgments, 331–333

Private law and internal market, 579–580
Product liability, pharmaceuticals act, 69–74
case law, 74
causation, 72–73

grounds of liability, 70–71
other rules, 73–74
right of disclosure, 72
Proof of causation in Tort Law, 713–715

Property law perspectives III, 587–591

of papers, 587–590
scope and merit, 590–591

Punitive damages
Belgian perspective, 674–680

Axo v. Nosa, 676

consequences, 677–680
traditional antipathy, 674–676
civil liability, 663–664

Dutch private international law perspective, 681–682

foreign decisions, 661–667
current admissibility in Italy, 667
Italian Supreme Court of Cassation 5 July 2017, 664–667
situation in Italy, 661–663
tasks of civil liability, 663–664

French perspective, 668–673

of civil penalties, 671–673
in natural environment, 669–671

Italy, 661–663
current admissibility, 667

Supreme Court of Cassation 5 July 2017, 664–667

Spanish legal system, 697–702
courts of foreign law, 698–700
foreign judgments, 700–701
and the liability system, 697–698
private international law, 698–701
Q
Quelles réponses à la décadence des actions possessories?, 197-226

R
Radmacher v. Granatino, 547
Restitution of performance under illegal contract, Belgian perspective, 245-254
Nemo Auditur Turpitudinem Suam Allegans, 251-253
Pari Causa Turpitudinis Cessat Repetitio, 'Illegal' Contract, 246-251
Restitution under illegal contract, Scots Law perspective, 273-281
facts, 274-277
illegality and unjustified enrichment, 277-280
in Scotland, 280-281
Role of policy sources, 631-634
in England, 633-634
in English Canada, 634
in France, 631-632
in Quebec, 632-633
Rubin v. Eurofinance SA, 321
Ruxley Electronics and Construction Ltd v. Forsyth, 529

S
Schockschaden und Hinterbliebenengeld nach deutschem Recht und Angehörigenschmerzensgeld nach türkischem Recht, 341-369
Self-help remedies applicability of contract law
Artificial Intelligence (AI) regulations, 810-811
extrinsic enforcement, 811-813
inherent flexibility and malleability, 813-814
continuing need for contract law proactive measures, 818-819
reactive measures, 819-823
self-terminating software or shareware, 816-818
Smart contracts
B2C environment, regulatory strategy, 899-901
benefits and threats, 754-755
blockchain regulations, 754-755
characteristics, 790-792
consumer protection provisions, 892-899
passenger rights, 896-897
current legal framework, 737-740
definition, 756
force majeure concept, 787-804, 882, 891
good faith concepts, 779-780, 785, 810, 824, 891-892
key notions, definitions
blockchain, 732-734
decentralized smart contracts, 734-737
legal questions
General Data Protection Regulation (GDPR), 750
intellectual property laws, 743-744
national agreement, jurisdiction issues, 747-749
probative value, 749-750
real vs virtual worlds, 742-743
self-help measures, 745-746
property right issues, 873-876
security right issues, 876-877
strength and weakness, 888-891
use of new technologies, 740-742
Smit International (Deutschland) GmbH v. Josef Mobius Baugesellschaft & Co, 17
Spanish legal system, punitive damages, 697-702
and the liability system, 697-698
private international law
application by Spanish courts, 698–700
foreign judgments, 700–701
State Rules v. Uniform Rules, 556–558
Steiner v. Steiner, 567
Suisse Atlantique case, 13–14

T
Tort law in European Union, 287–292
Transocean Drilling UK Ltd v.

Providence Resources PLC case, 14
Trusted Execution Environments (TEE), 938

U
UK Consumer Rights Act 2015, 762, 769–770
Unfair Terms Directive, 762
Unitary patent and the UPC, 103–109
European patents without unitary effect, 105–106

European patent with unitary effect, 103–104
recent challenges and expected entry into force, 106–109
unified patent court, 104–105

V
Vaccination, European legal systems, 58–60
Vertical v. horizontal approaches to monitoring, 180–182

W
Wang Sulan v. Tu Men & Zhu Dongli, 48
Wilkes v. Depuy International, 92

Y
Yao Ming v. Hubei Yunhe Shark Sportswear Co., 47
Young Property Lawyers Forum (YPLF, 2018), 955–957