

Subject Index

A

A v. Hoare, 216
A v. National Blood Authority, 101, 102, 128
 Access economy, 408
 Ad hoc asset management, 468–481
Adams v. Bracknell Forest B.C., 216
 Affectional bond, 59
Agreal, 124
Akers v. Samba, 614, 621
Albonetti v. Wirral MBC, 217
Allmänna reklamationsnämnden (ARN), 650
 American Law Institute (ALI), 699
 Animal protection act, 46
 Animals category, changing legal status of Belgium, 48–50
 compensation for damage, 57–63
 execution of seizure for debts, 63–66
 family law regulations, 51–57
 France, 47–48
 Germany, 44–45
 implications, 66–69
 Netherlands, 45–47
 overview, 40–41
 person/thing dichotomy, 41–44
 Anthropocene, 43
Arnold v. Britton, 73, 76
 Articles 101 and 102 Treaty on the Functioning of the European Union (TFEU), 585
 Artificial intelligence (AI), 405–406, 562, 563, 779
 criticism of, 578–579
 digital contracts directives
 AI vs. DCD, 412–413
 ambiguities with the DCD’s scope, 409–412
 challenges of, 404–407
 DCD’s scope, 408–409
 impact on conformity, 415–416
 impact on safety, 414–415
 lack of conformity, 421–423

 products liability, 423–424
 violation of the conformity criteria, 417–421
 Waze navigation app, 416–417
 European legal and pre-legal documents, 563–567
 legal causality
 new ideas, 573–578
 old schemas and conceptions, 567–573
 overview, 562–563
 Austrian product liability act, 95

B

Babcock v. Jackson, 690
Bakalar v. Vavra, 690
Bank of Credit and Commerce International SA v. Ali, 74, 78, 79
Basely v. Clarkson, 209
Beattie v. Lord Ebury, 205
 Belgian Civil Code (BCC), 164, 177, 501
 purposes of Article 1110, 169–177
 Belgian Code of Economic Law (BCEL), 174
 Belgian private law, legal ignorance
 contract law, 166–177
 debated in private law, 164–166
 statutes of limitation, 186–196
 tort law, 177–186
 Beneficiary’s interest in English, Japanese and Quebec trusts
 common law trusts, 614–616
 Japan
 core rights of the beneficiary, 617–618
 differences from contract, 616–617
 duration of, 618
 proprietary remedies, 618–619
 overview, 612–614
 Quebec
 core rights of the beneficiary, 627–628

- differences from legal personality, 629–631
 - nature of the ‘ownerless’ trust, 628–629
 - new Quebec trust, 626–627
 - old Quebec trust, 625–626
 - problems with trustee ownership, 623–624
 - sui generis* right, 622–623
- Bernhard v. Harrah’s Club*, 690
- Big Data, 707
- Bilbie v. Lumley*, 200, 202
- Black-box algorithms, 578, 581
- Blackburn Bobbin v. TW Allen*, 16
- Brennan v. Bolt Burdon*, 202, 204
- British Institute of International and Comparative Law (BIICL), 32
- Bundesgerichtshof (BGH)*, 256
- Bürgerliches Gesetzbuch (BGB), 497
- Business-to-consumer (B2C) relationships, 442
- C
- C18/18 Eva Glawischnig Piesczek v. Facebook Ireland Limited*, 930
- Calimach Code, 921
- Cave v. Robinson Jarvis & Rolf*, 219
- Central London Property Trust v. High Trees House*, 14
- Channel Island Ferries v. Sealink*, 33
- Charter of Fundamental Rights of the European Union (CFR), 762
- Civil Code of Quebec (CCQ), 613
- Civil justice, frontiers in, 143–155
- Closed-circuit television (CCTV), 764
- College van Burgemeester en Wethouders van Rotterdam v M. E. E. Rijkeboer*, 796
- Commercial trusts in civil law
 - jurisdictions
 - asset management and investment, 467–481
 - financing, 481–487
 - overview, 464–466
- Commercialization of consumers’ data
 - Big Data and consumers’ information, 705–707
 - consumer rights and Big Data
 - discrimination, 715–719
 - inability of traders, 712–715
 - security breaches, 710–711
 - threats, 707–708
 - value of, 708–710
 - EU consumer *acquis v. commercialisation of Big Data*
 - commission’s response, 724–728
 - discrimination, 723
 - privacy and consent, 719–723
 - interdisciplinary approach, 728–730
 - overview, 702–705
- Commission on European Family Law (CEFL), 505
- Common Optional Matrimonial Property Regime (COMPR), 491
- Comparative tort Law, 545–555
- COMPR. *See* Common Optional Matrimonial Property Regime (COMPR)
- Consumer credit, regulation of, 133–134
- Consumer protection
 - consumer complaints board decisions, 651–656
 - Danish Consumer Complaints Board, 649–651
 - EU case law regarding Article 5 of the directive, 644–645
 - general principles of interpretation in contract law, 635–640
 - implementation of article 5 in national law, 643–644
 - national court decisions, 646–649
 - non-statutory rules of interpretation in national contract law
 - contra stipulatorem rule, 640–642
 - minimum rule*, 642–643
 - principle of validity, 643
 - overview, 634–635
- Consumer Rights Directive (CRD), 713

- Consumer Sales Directive (CSD), 418
- Contracts for the International Sale of Goods 1980 (CISG), 969
- Contractual performance, breach of
 - contract and contractual obligations
 - adaption and termination of contracts under changed circumstances, 872-877
 - case against unification in european contract law, 870-872
 - case for codification in european contract law, 881-883
 - overview, 854-857
 - permanent default of non-performing party, 857-862
 - temporary default of non-performing party, 862-870
 - termination of permanent contracts for cause, 877-881
- Cooperatieve Vereniging Snb-React U.A. v. Deepak Mehta*, 940
- Costa v. ENEL*, 586
- Court of Justice of the European Union (CJEU), 720
- COVID-19, safe transport + air passenger rights
 - deficiencies of the montreal system, 662-670
 - impact of, 676-678
 - mutual impact of safety
 - material duties, 672
 - operational duties, 672-673
 - rules on violation of the implemented rules, 673-676
 - transparency, 672
 - overview, 660-662
 - passenger safety *de lege ferenda*, 678-686
 - recommendation for safety-oriented passenger rights, 686-687
 - safety in the montreal system, 662
- COVID-19 times, contractual performance in
 - England
 - COVID-19 and frustration, 36-38
 - COVID-19 and the parties, 34-36
 - judicial discretion, 13-20
 - France
 - contractual toolbox, 31-33
 - force majeure, 24-28
 - hardship, 28-31
 - messy state intervention, 20-24
 - special legislative intervention, 9-13
 - overview, 4-9
- Curran v. Davis*, 625
- D
- Das Bürgerliche Gesetzbuch (BGB)*, 255
- Data
 - counter-performance and GDPR, 812-815
 - digital content or digital services, 815-818
 - goods and data ownership, 818-826
 - inheritance, 826-828
 - marketplaces and economy, 808-811
- Data economy, 699
- Data inheritance, 826-828
- Databases, ownership of
 - data protection and databases protection, 734-738
 - data protection and *sui generis* rights, 750-752
 - sui generis* right on databases
 - european harmonization, 739
 - exhaustion rule, 748-750
 - substantial investment, 739-748
- Davis Contractors Ltd v. Fareham Urban District Council*, 17, 207
- DCD. *See* Directive on the supply of digital content and digital services (DCD)
- Deceased people
 - legal framework, EU member state level, 788-790
 - legal framework, GDPR, 787-788
 - personal data, 795-800
- Declaratory theory of law, 203
- Delfi AS v. Estonia*, 937
- Den Danske Rejsegruppe (DDR), 647
- Denny, Mott and Dickson Ltd. v. James B. Fraser & Co. Ltd.*, 208

- Deutsche Morgan Grenfell v. Inland Revenue*, 204
- Digital consumer contract law and new technologies, 137–141
- Digital content and services
- consumer rights directive, 520–523
 - exchange for personal data, 535–537
 - active and passive collection of consumers, 538–540
 - General Data Protection Regulation, 540–542
 - goods with digital elements, 528–529
 - liability regime, 533–534
 - scope of application of Directive 2019/770, 529–532
 - new digital content directive, 523–527
 - overview, 518–519
- Digital Content Directive (DCD), 703
- Digital data, 818
- Digital representations of value, 535
- Digital Services Act, 930, 932, 934, 936, 937, 940
- Electronic Commerce Directive, 927–934
 - hosting activity, 937–943
 - hosting services, 934–937
- Digital Services Directive (DSD), 725
- Digital single market, 518
- Directive on the online sale of goods (SGD), 404
- Directive on the supply of digital content and digital services (DCD), 404
- Domestic Public Standards, 975
- Dordević v. Croatia* (2012), 777
- Dunnage v. Randall*, 210
- Dutch Civil Code (DCC), 98
- E
- Edwinton Commercial Corporation v. Tsavlis*, 35
- Electricité de France (EDF), 27
- Emerging technologies, 562
- England and Wales, legal ignorance
- contract and unjust enrichment law
 - frustration for supervening illegality, 206–209
 - misrepresentation of law, 205–206
 - mistakes of law, 200–205
- overview, 198–199
- statutes of limitation, 214–221
- Section 11, 14 and 33, Limitation Act 1980, 215–218
 - Section 32, Limitation Act 1980, 218–222
- tort law, 209–214
- Error iuris* (mistake on the law), 297
- EU Aviation Safety Agency (EASA), 662
- EU law in international commercial arbitration
- autonomy of arbitration from EU law, 589–593
 - communitarization of review procedures, 599–603
 - Eco Swiss* case, 593–599
 - overview, 584–585
 - supremacy of EU law and erosion of national procedural autonomy, 585–588
 - West Tankers* and the effect of Brussels regulation, 603–609
- EU law legal relationships between private parties, 135–136
- European Centre for Disease Prevention and Control (ECDC), 661
- European Convention on Human Rights (EHCR), 328, 699, 761
- European Court of Human Rights (ECtHR), 294, 503, 699, 761
- European Court of Justice (ECJ), 157, 443, 584, 664
- European Data Protection Board (EDPB), 815
- European Data Protection Supervisor (EDPS), 703, 796, 812
- European Democracy Action Plan (EDAP), 932
- European Group on Tort Law (EGTL), 547
- European Law Institute (ELI), 143, 699
- European Tort Law (ETL), 547
- European Union (EU), 787

Eva Glawischnig Piesczek v. Facebook Ireland Limited, 930

F

Fadeyeva v. Russia (2005), 769

Fibrosa Spolka Ackcyjna v. Fairbairn, Lawson Combe Barbour Ltd, 17

Football Dataco v. Sportradar, 744

Franco-German common optional matrimonial property regime

France *vs.* Germany, 492-499

harmonization initiative

external success, 513-514

internal success, 511-512

legal transplant in Belgium, 500-511

overview, 490-492

French Code Civil (FCC), 497, 514

French law, comparative analysis of evidence of land ownership, 844-847
land registration in declaratory systems, 840-844

overview, 836-840

underlying discourse of property,

847-851

Furness Withy (Australia) Pty Ltd v. Metal Distributors (UK) Ltd, 200

G

Gee v. DePuy International, 102, 103

General Data Protection Regulation (GDPR), 704, 736, 787, 810

Georgel and Georgeta Stoicescu v. Romania (2011), 777

German law, legal ignorance

contract law

contractual liability, 262-273

violation of a statutory prohibition or public policy, 258-262

overview, 255-256

state of the debate, 256-258

statutes of limitations, 285-289

tort law

breach of statutory duty under section 823 (2) BGB, 277-280

claim pursuant to section 823 (1) BGB, 273-277

intentional damage contrary to public policy to section 826 BGB, 280-282

state for acts of civil servants to section 839 BGB, 282-284

Global Positioning System (GPS), 416

Goods with digital elements, 528, 543

Great Peace Shipping Ltd. v. Tsavliris Salvage (International) Ltd., 202

Gross negligence, 434

Guaranty Trust v. The King, 625

H

Halsey v. Milton Keynes General NHS Trust, 146

Hardship, 5, 28-31

Harmonizing family law, 503-507

Hatton and others v. the United Kingdom (2003), 769

Haviltex test, 82

Husserl v. Swiss Air, 665

I

Implicit contractual duties, 270

Imprévision, 26

Indreptarea legii, 921

Innoweb v. Wegner, 741

Internet of Things (IoT), 413, 533

Internet Protocol (IP), 940

Internet service provider (ISP), 929

Investors Compensation Scheme Ltd v. West Bromwich Building Society, 75

Italian private law, legal ignorance
authoritative standard contracts, 309-310

in Courts, 305-308

exoneration clauses, 309

full disclosure, 309

ignorantia legis and intentional torts, 304-305

insurance, 310

legislative intervention, 310

mistake on law and pre-contractual liability, 303-304

overview, 293-297

- problem of error iuris in contract law, 300-303
- sources and preliminary issues, 297-300
- I.V. Aronstein*, 135-136
- J
 - J Lauritzen AS v. Wijsmuller BV*, 36
 - Justizkredit*, 267
- K
 - King v. Bristow Helicopters Ltd.*, 666
 - Kitchen v. R.A.F. Association*, 218
 - Kleinwort Benson Ltd v. Lincoln City Council*, 201, 219, 221
- L
 - L. v. Lithuania* (2007), 776
 - Laliberté v. LaRue*, 625
 - Land Registration Act, 840
 - LE v. Transport Aéreos Portugueses SA*, 674
 - Ledyayeva and others v. Russia* (2006), 770
 - Legal decision-makers, 693-698
 - Legal ignorance, France
 - contract law
 - duty on contracting parties, 237-239
 - mistakes of law, 225-237
 - lack of knowledge of the law, 241-244
 - limitation periods in French law, 240-241
 - overview, 224-225
 - tort law, 244-246
 - retroactivity of case law, 246-250
 - Liability of parents for dangerous actions towards their children
 - Dutch case law, 429-432
 - Dutch judgment from a German perspective, 437-438
 - Dutch tort law, 427-430
 - evaluation, 438-440
 - German approach, 432-433
 - diligentia quam in suis*, 435-437
 - gross negligence, 434
 - overview, 426
 - Loi Failliot*, 9
 - López Ostra v. Spain*, 768
 - L'Oréal v. eBay*, 939
 - M
 - Machine learning (ML), 405
 - Mahmoud v. BCCI*, 78
 - Markesinis's German law of torts, 393-397
 - Massachusetts Institute of Technology (MIT), 715
 - Medically Assisted Reproduction, 946
 - role of genetic continuity, 962-967
 - western legal tradition, 949-952
 - Metropolitan Properties v. Purdy*, 13
 - Metropolitan Water Board v. Dick, Kerr & Co*, 13, 35
 - Middle East respiratory syndrome coronavirus (MERS-CoV), 661
 - Mólka v. Poland* (2006), 773
 - Moral damage, 59
 - Morris v. KLM Royal Dutch Airlines*, 666
 - Multi-source financing, 483
 - N
 - National Carriers v. Panalpina*, 34
 - National Security Agency (NSA), 764
 - Natural interpretation, 652
 - NCC case on contract interpretation
 - application of these principles to the facts, 79-82
 - development of English law, 74-76
 - Dutch law, 82-85
 - Clause 7 of Settlement Agreement, 85-88
 - leading modern cases, 76-79
 - overview, 72-74
 - Netherlands, legal ignorance
 - contract law, 317-320
 - overview, 313
 - state of the debate on, 314-317
 - statutory limitation periods, 325-333
 - tort law, 320-325
 - Netherlands Commercial Court (NCC), 72
 - New York Convention (NYC), 589-590
 - Normative metastasis, 297

- O
- Objective foundation, 915-917
 - Omnibus directive (Directive 2019/2161), 703
 - Opt-out Model, 802-805
- P
- Pankhania v. Hackney London Borough Council*, 205
 - Parallel debt structure, 485
 - Pentiacova and 48 others v. Moldova* (2005), 773
 - Percy v. Hall*, 214
 - PMDD. *See* Posthumous medical data donation (PMDD)
 - PMDD Proposal, 790-791
 - alternative to PMDD, 800-802
 - critical analysis, 791-794
 - Portugal, legal ignorance
 - contract law, 339-341
 - grounds for a duty, 345-350
 - mistakes of law, 341-345
 - law of prescription, 354-360
 - overview, 338
 - subjective and objective, 360-361
 - tort law, 350-353
 - Posthumous medical data donation (PMDD), 787, 790-794
 - Posthumous reproduction, 948
 - Posthumous Reproduction
 - in EU, 952-957
 - national case-law prohibiting, 958-962
 - Posthumous sperm retrieval (PSR), 964
 - Powell and Rayner v. the United Kingdom* (1990), 766
 - Pretty v. the United Kingdom* (2002), 772
 - Principles of European Contract Law 1998 (PECL), 970
 - Principles of European Tort Law' (PETL), 547
 - Private foundations in a comparative law
 - beneficiaries and their rights, 896-898
 - civil law systems, 885-890
 - duration of, 902-903
 - enforcing their rights and claims, 908-911
 - establishment of, 893-894
 - governing body of, 903-905
 - mixed and common law jurisdictions, 890-893
 - property of, 901-902
 - purpose and activities of, 899-901
 - rights of the founder, 894-896
 - state control of the operation of, 907-908
 - supervisory body of, 905-906
 - transformation of, 906-907
 - Procedural indulgences, 397
 - Product liability directive
 - Austria, 95-97
 - Denmark, Norway and Sweden, 119-122
 - England & Wales, 101-103
 - France, 103-106
 - Germany, 106-109
 - Italy, 109-112
 - Netherlands, 98-101
 - overview, 92-95
 - Poland, 112-116
 - Portugal, 116-119
 - Spain, 122-125
- Q
- Qualitative liability, 98
 - Quality of life
 - clean and healthy living environment, 766-771
 - current privacy paradigm and Big Data, 761-766
 - overview, 758-761
 - physical and psychological integrity, 771-775
 - privacy in Big Data era, 778-782
 - protection of minorities and weaker groups, 775-778
 - Quinland v. Governor of Swaleside Prison*, 213

- R**
R v. Governor of Brockhill Prison, Ex p. Evans (No.2), 212
R v. HFEA, 956
Raggett v. Society of Jesus Trust 1929 for Roman Catholic Purposes, 217
Reford v. National Trust Co., 624
 Regulation on the transfer of non-personal data (RTNPD), 763
 Regulatory law, 349
 Risk-utility test, 94
Robertson v. Saadat, 966
R.R. v. Poland (2011), 774
- S**
 Safety obligations
 (*Verkehrssicherungspflichten*), 275
Saunders v. Vautier, 614
 Second World War, 781
 Secondary norms, 299
 Severe Acute Respiratory Syndrome
 Coronavirus 2 (COVID-19), 4
 SGD. *See* Directive on the online sale of goods (SGD)
 Spanish law, legal ignorance, 365–366
 under consideration, 370–371
 contract law, 372–374
 consumer protection rules, 382–383
 invalidating error, 374–375
 precontractual duties, 375–382
 error iuris and *facti ignorantia*, 371–372
 material scope, 369–370
 personal scope, 368
 presumption *iuri et de iure*, 366–368
 statutory limitation periods, 384–389
 tort law, 389–390
 Special purpose vehicle (SPV), 482
 Statute of Elizabeth Act 1571, 910
 Stigma damages, 78
 Subjective foundation, 917–920
Subsea Survey Solutions LLC v. South Stream Transport BV, 72, 88, 89
- T**
Taylor v. Caldwell, 15
 Theory of intent (*Vorsatztheorie*), 274
 Treaty Establishing the European Community (TEC), 594
- U**
 Unfair Commercial Practices Directive (UCPD), 720
 Unfair Contract Terms Directive (UCTD), 725, 729
 Unfair terms and supplementation of the contract
 Directive 1993/13/EEC, 443–448
 duty to renegotiate, 454–456
 judicial correction, 456–462
 overview, 442–443
 statutory provisions in the ECJ case-law, 448–454
 Unworthy Heir Rule, 920–923
 URL (Uniform Resource Locator), 933
UsedSoft v. Oracle, 748
- W**
 Whitewashing opinions
 (*Gefälligkeitsgutachten*), 279
Wilkes v. DePuy International Limited, 102
Williams v. Roffey, 34
Wood v. Capita Insurance Services, 73–74, 77
 World Health Organization (WHO), 24–25
 World War I (WWI), 5, 12
 World War II (WWII), 4, 12, 208. *See also* Second World War
- Y**
Y v. A Healthcare NHS Trust & Ors, 956
Yam Seng Pte v. International Trade Corporation, 33
- Z**
Zehnalová and Zehnal v. the Czech Republic (2002), 770