

Kent Academic Repository

Full text document (pdf)

Citation for published version

Vignerot, Sophie and Wong, Simone (2011) Personal Security. In: Antonioli, Luisa and Fiorentini, Francesca, eds. A Factual Assessment of the Draft Common Frame of Reference. Sellier, Munich, pp. 179-206. ISBN 978-3-86653-122-2.

DOI

Link to record in KAR

<http://kar.kent.ac.uk/25023/>

Document Version

UNSPECIFIED

Copyright & reuse

Content in the Kent Academic Repository is made available for research purposes. Unless otherwise stated all content is protected by copyright and in the absence of an open licence (eg Creative Commons), permissions for further reuse of content should be sought from the publisher, author or other copyright holder.

Versions of research

The version in the Kent Academic Repository may differ from the final published version.

Users are advised to check <http://kar.kent.ac.uk> for the status of the paper. **Users should always cite the published version of record.**

Enquiries

For any further enquiries regarding the licence status of this document, please contact:

researchsupport@kent.ac.uk

If you believe this document infringes copyright then please contact the KAR admin team with the take-down information provided at <http://kar.kent.ac.uk/contact.html>

Table of Contents

Authors	XIII
Preface by the General Editors of “The Common Core of European Private Law” Project	XV
Preface by the Editors in Chief of the Case-Based Assessment	XVII

Introduction

LUISA ANTONIOLLI / FRANCESCA FIORENTINI

1. From the Europeanization of Private Law to the Project of a European Common Frame of Reference	
1.1. Towards a European Private Law	I
1.2. The Academic Groups Working for a European Private Law	3
1.3. The EU Institutions and Harmonization of Private Law	7
2. The Draft Common Frame of Reference and Its Features	
2.1. The Draft Common Frame of Reference	11
2.2. Content	12
2.3. Scope, Sources and Structure	13
2.4. The Drafting Process and Its Method	19
2.5. Language and Style	21
2.6. Purposes	22
2.7. Possible Use of the DCFR by the EU Institutions	24
2.8. Fundamental Principles, Overriding Principles and Clashing Values	25
3. The Common Frame of Reference and the EU Legal Process: Institutional Boundaries, EU Competences and Social Justice	
3.1. EC/EU Competences and Legal Harmonization: Market v. Social Values	28
3.2. The DCFR as a Toolbox or a Code – “Constitutional” Implications	34
4. The Common Core of European Private Law and the Case-Based Assessment of the Draft Common Frame of Reference	
4.1. Project’s Aims	39
4.2. Method	40
4.3. Results and Long-Term Goals	41

4.4. Case-Based Assessment of the DCFR. Aims and Object	43
4.5. Method, Limits and Value of the Factual Assessment	44
4.6. Critical Essays	46
Case-Based Assessments	
Unfair Terms	
CHRIS WILLETT	
1. General Introduction	53
2. Negotiated, Non Negotiated Terms and Standard Terms. Case 1	54
3. Coverage by Reference To Substantive Effects of Terms (A). Case 2	65
4. Coverage by Reference To Substantive Effects of Terms (B). Case 3	71
5. Concluding Comments	75
Change of Circumstances	
VALENTINA BINEVA	
1. Introduction	77
2. Three Cases	
Case 1: Hardship	78
Case 2: Force majeure	84
Case 3: Change of circumstances in aleatory contract	88
3. Concluding Remarks	95
Plurality of Debtors	
SONJA MEIER	
1. Three Cases	97
Case 1: Forms of plurality of debtors	97
Case 2: Effect of prescription of creditor's claim against one co-debtor	103
Case 3: Effect of creditor's release in favour of one co-debtor	109
2. General Observations	115

Sales

ROBERTA PELEGGI

1. Three Cases	
Case 1: Lack of promised qualities	119
Case 2: Passing of risk	131
Case 3: Exclusion or limitation of buyer's rights in case of lack of conformity of goods	136
2. Comparison and Evaluation	140

Lease of Goods

GRZEGORZ PANEK

1. Three Cases	
Case 1: Lease for definite and indefinite period	143
Case 2: Financial leasing	149
Case 3: Lack of conformity of the leased good	155
2. Final Remarks	160

Mandate

CARLOS GÓMEZ LIGÜERRE

1. Introduction	163
1.1. A Wide and Unified Concept of Mandate	165
1.2. Implied Mandate, Right to Compensation and Gratuitous Representative	166
1.3. Termination of the Mandate Relationship	167
2. Three Cases	
Case 1: Irrevocable mandate	168
Case 2: Consequences of acting beyond mandate	170
Case 3: Conflict of interests	175

Personal Security

SOPHIE VIGNERON / SIMONE WONG

1. Three Cases	
Case 1: Dependent personal security in professional context	179
Case 2: Dependent personal security in consumer context	190
Case 3: Independent personal security in consumer context	199
2. Comparative Analysis	203

Non-contractual Liability Arising out of Damage Caused to Another
MÓNIKA JÓZON

1. Introduction	
1.1. Preliminary Remarks	207
1.2. The Two-track Structure of Tort Law in Europe	208
2. Three Cases	
Case 1: Fault-based versus strict liability, on legal categories	216
Case 2: Pure economic loss and loss of a chance	225
Case 3: Prevention and mitigation of damage	235
3. Conclusion	
3.1. Findings of the Research under the Hypotheticals	241
3.2. Critical Remarks on the Integrative Effects of the DCFR on Non-contractual Liability	243

Unjustified Enrichment

JAN SMITS / VANESSA MAK

1. Introduction	249
2. Three Cases	
Case 1: Building on another's land	250
Case 2: Mistaken payment	256
Case 3: Supplying goods or services without a contract	261
3. Critical Evaluation	
3.1. The Taxonomy of Book VII Draft CFR	264
3.2. The Function of Unjustified Enrichment Law	266
3.3. The Function of the DCFR	268

Acquisition and Loss of Ownership of Goods

LARS VAN VLIET

1. Three Cases	
Case 1: Sale out of a bulk	269
Case 2: Sale and transfer through constitutum possessorium by non-owner to bona fide purchaser	274
Case 3: Retention of ownership – production?	286
2. Critical Evaluation	296

Critical Essays

The 'Three Lives' of European Private Law

CHRISTOPH U. SCHMID

1. Introduction	299
2. The First Life – The CFR Process	301
3. The Second Life – EU Consumer Contract Law	304
4. The Third Life: ECJ Jurisprudence	307
5. Conclusion	312

Draft Common Frame of Reference and Terminology

ELENA IORIATTI FERRARI

1. Introduction	313
2. Common Frame of Reference (CFR) and Terminology	316
3. The Draft Common Frame of Reference (DCFR) As a "Tool-Box"	
3.1. General Function	318
3.2. Structure and Terminology	321
3.3. Definitions and Terminology	325
4. Conclusion	329

Social Contracts in the Light of the Draft Common Frame of Reference for a Future EU Contract Law

LUCA NOGLER / UDO REIFNER

1. The Ignored Social Dimension of the DCFR	335
2. The Limitation to Consumer Sales	339
3. Its Political Threat to Social Contracts	
3.1. A European Commercial Code for Social Interests?	343
3.2. Political Programme in a Legal Form	344
3.3. An English Welfare Model for Social Contracts?	345
3.4. Collective Interests as Charity	348

4. A Problematic Concept of Contractual Justice	
4.1. Justice "without regard to the person"	349
4.2. What Justice for Social Contracts?	350
4.3. National Social Law as Distributive Contractual Justice	352
4.4. "The DCFR Is Particularly Concerned to Promote What Aristotle Termed Corrective Justice"	357
5. Ignoring Labour Contracts	360
5.1. National Employment Law Is More Than the Law of The Contract of Employment	361
5.2. The Social Dimension of the Commercial Contract Between the Temporary Work Agency and the User	364
6. Ignoring Consumer Credit Contracts	
6.1. Consumer Credit in Modern Contract Law	366
6.2. The Asocial Concept of Consumer Protection	368
6.3. The Impact for General Contract Law	371
6.4. The Failure to Provide Answers for Responsible Credit	373
7. Conclusion	375
Concluding Remarks	
LUISA ANTONIOLLI / FRANCESCA FIORENTINI	
Part I: Comparative Factual Results	377
Part II: Comparative Comments	410
Abbreviations	415
Bibliography	419
Case Law	467