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978-1-107-03880-6 - The Transformation of European Private Law: Harmonisation, Consolidation, Codification or Chaos?

Edited by James Devenney and Mel B. Kenny

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THE TRANSFORMATION OF EUROPEAN PRIVATE LAW

This book emanates from a duo-colloquium which explored the Europeanisation of private law in the context of efforts to consolidate the consumer *acquis*, the Draft Common Frame of Reference, the appointment of an Expert Group on a Common Frame of Reference in the area of European contract law, the passage of the Consumer Rights Directive and the proposed Common European Sales Law. This book, with fully updated contributions, critically reflects on whether the process of Europeanisation, which has shaped private law in the EU Member States, has now reached a significant turning point in its development, a point of *punctuated equilibrium*. Written by a team of leading authors, the topics covered will be of concern in all European legal systems and beyond.

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FOREWORD

*The Queen of Hearts
She made some tarts,
All on a summer's day;
The Knave of Hearts
He stole those tarts,
And took them clean away.
The King of Hearts
Called for the tarts,
And beat the knave full sore;
The Knave of Hearts
Brought back the tarts,
And vowed he'd steal no more.*

(Lewis Carroll, *Alice in Wonderland*)

For the outside observer, European private law seems to be a conundrum of rather strange artefacts: PECL (Principles of European Contract Law), PEICL (Principles of European Insurance Law), PETL (Principles of European Tort Law), DCFR (Draft Common Frame of Reference), DCR (Directive on Consumer Rights), CESL (Common European Sales Law), maybe even ECC (European Civil Code) . . . The authors of this volume, coming from different European jurisdictions, try to put some clarity and order into this near-to Babylonian confusion while at the same time taking a closer, yet critical, look at several important yet rather controversial issues of the ongoing (truly) cross-border debate. These concern sources, subject matters, underlying rationalities and objectives, efficiency questions, relationships to different national and even non-European private laws, remedies and enforcement, and effects on legal education and training. Will European private law remain an 'irritant' in legal discourse, or allow legal innovations? This is the underlying question of all contributions even if they may come to different answers. In their conclusion, the editors give an overview of the rather complex testimonies collected in this volume of essays.

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FOREWORD

All contributions demonstrate that the ‘Europeanisation’ of national private laws is running at full speed, but also that a great number of intellectual ‘blindspots’ have arisen. So far, mostly contract law has been the object (some say the victim) of this movement, but there will and should be (or not?) spill-over effects to neighbouring areas like tort law, personal securities, even property regimes – one may not know where this ‘incoming tide’ is going to stop. Readers of this volume, which is the result of a conference organised by the editors, will probably not find simple answers but rich ‘food for thought’ for reaching their own conclusions on the central issues, paradigms and potential results of this truly European debate. Where is now the ‘King of Hearts’ calling back the national ‘tarts’ stolen by the (EU) ‘Knave of Hearts’, or will the ‘Queen of Hearts’ make truly ‘European tarts’ in the future?

Professor Dr Dr hc Norbert Reich

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ABBREVIATIONS

ADR	alternative dispute resolution
B2B	business to business
B2C	business to consumer
C2C	consumer to consumer
CCCat	Catalan Consumer Code
CESL	Common European Sales Law
CISG	UN Convention on Contracts for the International Sale of Goods
CJEU	Court of Justice of the European Union
DCFR	Draft Common Frame of Reference
DCR	Directive on Consumer Rights
GPCCA	General Part of the Civil Code Act (Estonia)
IMD	Insurance Mediation Directive 2002/92/EC
ISD	Investment Services Directive 93/22/EC
LMADP	Law 15/2009 on Mediation in Private Law (Spain)
LOA	Law of Obligations (Estonia)
MiFiD	Markets in Financial Instruments Directive 2004/39/EC
PECL	Principles of European Contract Law
PEICL	Principles of European Insurance Contract Law
SGECC	Study Group on the European Civil Code
SME	small or medium-sized enterprise
TFEU	Treaty on the Functioning of the European Union
TRLGDCU	Royal Legislative Decree 1/2007 adopting the General Act for Protection of Consumers and Users (Spain)
UTCCR	Unfair Terms in Consumer Contracts Regulations 1999 (UK)