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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THE TRANSFORMATION OF EUROPEAN PRIVATE LAW

Harmonisation, Consolidation, Codification or Chaos?

Edited by

JAMES DEVENNEY

and

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CONTENTS

Foreword by Norbert Reich vii
List of abbreviations ix

Introduction 1
JAMES DEVENNEY AND MEL B. KENNY

1 The Draft Common Frame of Reference in relation to English contract law 4
STEPHEN WADDAMS

2 The Draft Common Frame of Reference and European contract law: moving from the ‘academic’ to the ‘political’ 23
PAULA GILIKER

3 The Europeanisation of contract law and the role of comparative law: the case of the Directive on Consumer Rights 45
CRISTINA AMATO

4 The private law dimension to the ‘state of the Union’: (D)CFR/CESL initiatives and the Europeanisation of private law 63
JAMES DEVENNEY AND MEL B. KENNY

5 European contract law: how to exclude land? 78
PETER SPARKES

6 Harmonisation and its discontents: a transaction costs critique of a European contract law 100
ROGER HALSON AND DAVID CAMPBELL
7 Theory and practice of constructing a common contract law terminology 131

CHIARA PERFUMI

8 Private law discourse and scholarship in the wake of the Europeanisation of private law 148

OLHA CHEREDNYCHENKO

9 Contract codification and the English: some observations from the Indian Contract Act 1872 172

WARREN SWAIN

10 Consequences of implementing EU legislation: an Estonian experience 196

IRENE KULL AND SANDER KÄRSON

11 The impact of Europe on Irish contract law 208

CLIONA KELLY

12 The Europeanisation of insurance contract law: the insurer’s duty to advise and its regulation in German and European law 235

PIOTR TERESZKIEWICZ

13 European contract law-making and development: lessons from the Unfair Contract Terms Directive’s price term exemption 256

MICHAEL SCHILLIG

14 Enforcement or compensation? Damages actions in EU law after the Draft Common Frame of Reference 276

DOROTA LECZYKIEWICZ

15 Consumer complaints and alternative dispute resolution: harmonisation of the European ADR system 295

IMMACULADA BARRAL-VIÑALS

16 Conclusions: the transformation of European private law 316

JAMES DEVENNEY AND MEL B. KENNY

Index 326
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.
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
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)