Towards a European civil code. - 4th rev. and exp. ed.


Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
### Summary of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>About the Authors</td>
<td>xiii</td>
</tr>
<tr>
<td>Preface to the Fourth Edition</td>
<td>xlv</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>xlvii</td>
</tr>
<tr>
<td><strong>Part I</strong></td>
<td></td>
</tr>
<tr>
<td>General Issues</td>
<td>1</td>
</tr>
<tr>
<td><strong>Chapter 1</strong></td>
<td></td>
</tr>
<tr>
<td>Towards a European Civil Code</td>
<td>3</td>
</tr>
<tr>
<td>Ewoud Hondius</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 2</strong></td>
<td></td>
</tr>
<tr>
<td>Roman Law and the Harmonization of Private Law in Europe</td>
<td>27</td>
</tr>
<tr>
<td>Reinhard Zimmermann</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 3</strong></td>
<td></td>
</tr>
<tr>
<td>European Private Law, <em>Lex Mercatoria</em> and Globalization</td>
<td>55</td>
</tr>
<tr>
<td>Klaus Peter Berger</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 4</strong></td>
<td></td>
</tr>
<tr>
<td>American Private Legislatures and the Process Discussion</td>
<td>71</td>
</tr>
<tr>
<td>Richard Hyland</td>
<td></td>
</tr>
<tr>
<td><strong>Chapter 5</strong></td>
<td></td>
</tr>
<tr>
<td>Private Regulation in European Private Law</td>
<td>91</td>
</tr>
<tr>
<td>Fabrizio Cafaggi</td>
<td></td>
</tr>
</tbody>
</table>
Summary of Contents

Chapter 6
The Influence of Primary European Law on Private Law 127
Arthur S. Hartkamp

Chapter 7
EU Directives as a Means of Private Law Unification 149
Peter-Christian Müller-Graff

Chapter 8
Interpretation of the Directives: The Role of the Court 185
Stephen Weatherill

Chapter 9
Competition and Contract Law 205
Katalin Cseres

Chapter 10
Principles of Contract Law 239
Arthur S. Hartkamp

Chapter 11
Procedural Implications of Civil Law Unification 261
Konstantinos D. Kerameus

Chapter 12
Towards Proceduralization of Private Law in the European Multi-Level System 277
Christian Joerges and Christoph Schmid

Chapter 13
European Competence and a European Civil Code, a Common Frame of Reference or an Optional Instrument 311
Jacobien W. Rutgers

Chapter 14
Constitutional Aspects of a European Civil Code 333
Chantal Mak

Chapter 15
The ‘Social’ Side of Contract Law and the New Principle of Regard and Fairness 353
Brigitta Lurger

Chapter 16
The Notion of Damage 387
Christian von Bar
Chapter 17
Some Law and Economics of Harmonizing European Private Law
Fernando Gomez

Part 2
Substantive Law

A – Family Law and Law of Succession

Chapter 18
Is Unification of Family Law Feasible Or Even Desirable?
Dieter Martiny

Chapter 19
Harmonization of the Law of Succession in Europe
Alain-Laurent Verbeke & Yves-Henri Leleu

B – Contract Law – General Issues

Chapter 20
Formation of Contracts
Rodolfo Sacco

Chapter 21
The Pre-contractual Stage
J.H.M. van Erp

Chapter 22
Agency
Michael Joachim Bonell

Chapter 23
Defects of Consent in Contract Law
John Cartwright

Chapter 24
Illegality and Immorality in Contracts: Towards European Principles
Hector L. MacQueen

Chapter 25
Standard Form Conditions
Thomas Wilhelmsson
Summary of Contents

Chapter 26
Interpretation of Contracts 587
Claus-Wilhelm Canaris and Hans Christoph Grigoleit

Chapter 27
The Concept of Good Faith 619
Martijn W. Hesselink

Chapter 28
Hardship and Modification (or ‘Revision’) of the Contract 651
Mustapha Mekki with collaboration of Martine Kloepfer-Pelèse

Chapter 29
Non-performance (Breach) of Contracts 681
Ole Lando

Chapter 30
The Foreseeability Limitation on Liability in Contract 699
James Gordley

Chapter 31
Limitation Periods 715
Michael Joachim Bonell

C – Contract Law – Specific Contracts 733

Chapter 32
The Case for a European Insurance Contract Act 735
Jürgen Basedow

Chapter 33
Service Contracts 757
Marco B.M. Loos

Chapter 34
European Law and Principles on Commercial and Investment Banking Contracts: An Advanced Area of Codification 787
Stefan Grundmann

Chapter 35
Suretyships by Private Persons 819
Aurelia Colombi Ciacchi
Summary of Contents

D – Tort 843

Chapter 36
The General Conditions of Unlawfulness 845
David Howarth

Chapter 37
Product Liability: A History of Harmonization 889
Geraint Howells

Chapter 38
Vicarious Liability 903
Gerhard Wagner

Chapter 39
Liability for Harm Caused by Things 921
Franz Werro

Chapter 40
The Frontier between Contractual and Tortious Liability in Europe: Insights from the Case of Compensation for Pure Economic Loss 945
Mauro Bussani and Vernon Valentine Palmer

Chapter 41
Economic Analysis of Tort Law and the European Civil Code 977
Michael Faure

E – Property 1001

Chapter 42
Transfer of Property 1003
Ulrich Drobnig

Chapter 43
Security Rights in Movables 1025
Ulrich Drobnig

Chapter 44
Harmonization of Security Rights on Immoveables: An Ongoing Story 1043
Vincent Sagaert
Summary of Contents

Chapter 45
Good Faith Acquisition of Movables 1065
Arthur F. Salomons

F – Trust 1083

Chapter 46
Trust and Fiducie 1085
Michel Grimaldi and François Barrière

Index 1107
About the Authors

**Christian von Bar**  
FIELD OF SPECIALISATION: Tort Law; Property Law; Private International Law. CORRESPONDENCE ADDRESS: European Legal Studies Institute, University of Osnabrück, Süsterstraße 28, D-49074 Osnabrück, Germany. E-mail: christian.v.bar@uos.de

**François Barrière**  
FIELD OF SPECIALISATION: Contract Law, Security Interest Law, Corporate & Finance Law, Trust Law. CORRESPONDENCE ADDRESS: Magistère de juriste d’affaires-DJCE, Centre Vaugirard II, Université Panthéon-Assas (Paris II), 122 rue de Vaugirard, 75006 Paris, France. Email: f.barriere@wanadoo.fr

**Jürgen Basedow**  
FIELD OF SPECIALISATION: Private International Law, Economic and Private Law of the European Union, in particular Insurance Law, Competition Law, Transport Law. CORRESPONDENCE ADDRESS: Max-Planck Institute for Comparative and International Private Law, Mittelweg 187, D – 20148 Hamburg, Germany. E-mail: basedow@mpipriv.de

**Klaus Peter Berger**  
FIELD OF SPECIALISATION: Contract Law, Private International Law, International Commercial Arbitration Law, Banking Law, Comparative Law. CORRESPONDENCE ADDRESS: Banking Law Institute, Center for Transnational Law (CENTRAL), Universität Köln, Albertus-Magnus Platz 1, D-50923 Köln, Germany. E-mail: kp.berger@uni-koeln.de
About the Authors

Michael Joachim Bonell
FIELD OF SPECIALISATION: Comparative Law, Uniform Law, International Trade Law. CORRESPONDENCE ADDRESS: Unidroit, Via Panisperna 28, I-00184 Roma, Italy. E-mail: mj.bonell@unidroit.org

Mauro Bussani
FIELD OF SPECIALISATION: Comparative Law, Tort Law, Legal Globalisation. CORRESPONDENCE ADDRESS: Facoltà di Giurisprudenza, Università di Trieste, P.le Europa, I–34100 Trieste, Italy. E-mail: mauro.bussani@units.it

Fabrizio Cafaggi
FIELD OF SPECIALISATION: European Private Law, Comparative Law. CORRESPONDENCE ADDRESS: European University Institute, Law Department, Via Boccaccio 12, 50133 Firenze, Italy. E-mail: fabrizio.cafaggi@eui.eu

Claus-Wilhelm Canaris
FIELD OF SPECIALISATION: Private Law, Commercial Law, Banking Law, Philosophy of Law. CORRESPONDENCE ADDRESS: Institut für Privatrecht und Zivilverfahrensrecht der Universität München, Prof.-Huber-Platz 2, D-80539 München, Germany. E-mail: christa.hausmann@jura.uni-muenchen.de

John Cartwright
FIELD OF SPECIALISATION: English and Comparative Contract Law; Tort Law; Land Law. CORRESPONDENCE ADDRESS: Christ Church, Oxford, OX1 1DP, United Kingdom. E-mail: john.cartwright@law.ox.ac.uk

Aurelia Colombi Ciacchi
FIELDS OF SPECIALISATION: Comparative law, European private law, Contract law, Tort law, Public interests in private relationships. CORRESPONDENCE ADDRESS: Groningen Centre for Law and Governance, University of Groningen, Law Faculty, P.O. Box 716, 9700 AS Groningen, the Netherlands. E-mail: Aurelia.Ciacchi@gmx.de

Katalin Cseres
FIELD OF SPECIALISATION: Competition Law, Consumer Protection; Law and economics. CORRESPONDENCE ADDRESS: Amsterdam Center For European Law and Governance, University of Amsterdam, Oude Tamshuispoort 4-6, 1000 Amsterdam, the Netherlands. E-mail: k.j.cseres@uva.nl

Ulrich Drobnig
FIELD OF SPECIALISATION: Security Rights (Personal and Proprietary); Comparative Civil Law. CORRESPONDENCE ADDRESS: Max-Planck-Institute for Comparative and International Private Law, Mittelweg 187, D-20148 Hamburg, Germany. E-mail: drobnig@mpipriv.de
Sjef van Erp
FIELD OF SPECIALISATION: methodology of European private law, comparative and European property law, private international law. CORRESPONDENCE ADDRESS: Maastricht University, Department of Private Law, Institute for European private law, P.O.B. 616, 6200 MD Maastricht, the Netherlands. E-mail: s.vanerp@maastrichtuniversity.nl.

Michael Faure
FIELD OF SPECIALISATION: economic analysis of accident law, environmental (criminal) law. CORRESPONDENCE ADDRESS: Metro, Faculty of Law, Maastricht University, PO Box 66, 6200 MD Maastricht, the Netherlands. E-mail: michael.faure@maastrichtuniversity.nl

Fernando Gomez
FIELD OF SPECIALISATION: Law and Economics, Contract Law, Tort Law CORRESPONDENCE ADDRESS: Facultad de Derecho, Universitat Pompeu Fabra, Ramon Trias Fargas 25-27, 08005 Barcelona, Spain. E-mail: fernando.gomez@upf.edu

James Gordley
FIELD OF SPECIALISATION: Comparative Law, Private Law, Legal History. CORRESPONDENCE ADDRESS: Tulane Law School, 6329 Freret Street, New Orleans, LA 70118, USA. E-mail: jgordley@tulane.edu

Michel Grimaldi
FIELD OF SPECIALISATION: Private Law. CORRESPONDENCE ADDRESS: Université Panthéon-Assas (Paris II), 12 Place du Panthéon, F-75231 Paris Cedex 05, France.

Hans Christoph Grigoleit
FIELD OF SPECIALISATION: Contract Law, Corporate Law, European Private Law, Private Law Theory. CORRESPONDENCE ADDRESS: Institut für Privatrecht und Zivilverfahrensrecht der Universität München, Prof.-Huber-Platz 2, D-80539 München, Germany. E-mail: grigoleit@jura.uni-muenchen.de

Stefan Grundmann
FIELD OF SPECIALISATION: Contract Law, Company Law, Banking Law, European Private Law. CORRESPONDENCE ADDRESS: Humboldt University Law School/European Law School, Unter den Linden 6, 10099 Berlin, Germany. E-mail: stefan.grundmann@rewi.hu-berlin.de

Arthur Hartkamp
FIELD OF SPECIALISATION: European Private Law. CORRESPONDENCE ADDRESS: Department of Private Law, Faculty of Law, Radboud University
About the Authors

Nijmegen, PO Box 9049, 6500 KK Nijmegen, the Netherlands. E-mail: a.hartkamp@jur.ru.nl

Martijn Hesselink
FIELD OF SPECIALISATION: European Contract Law. CORRESPONDENCE ADDRESS: Centre for the Study of European Contract Law (CSECL), University of Amsterdam, PO Box 1030, 1000 BA Amsterdam, the Netherlands. E-mail: m.w.hesselink@uva.nl

Ewoud Hondius
FIELD OF SPECIALISATION: Consumer Protection; Contract Law; Tort Law. CORRESPONDENCE ADDRESS: Centre for European Private Law, Molengraaff Institute, Nobelstraat 2a, NL-3512 EN Utrecht, the Netherlands. E-mail: e.h.hondius@uu.nl

David Howarth
FIELD OF SPECIALISATION: Tort, Comparative Law, Economic Analysis of Law, Sociology of Law, Environmental Law. CORRESPONDENCE ADDRESS: Clare College, Trinity Lane, GB-Cambridge CB2 1TL, United Kingdom. E-mail: drh20@cam.ac.uk

Geraint Howells
FIELD OF SPECIALISATION: Consumer Law, Product Liability, European Private Law. CORRESPONDENCE ADDRESS: School of Law, Williamson Building, University of Manchester, Manchester, M13 9PL, United Kingdom. E-mail: geraint.howells@manchester.ac.uk

Richard Hyland
FIELD OF SPECIALISATION: Commercial Law; Comparative Law; Gift Law; Legal Theory. CORRESPONDENCE ADDRESS: Rutgers Law School, 217 N. Fifth St., Camden, New Jersey, USA. E-mail: hyland@camden.rutgers.edu

Christian Joerges
FIELD OF SPECIALISATION: European Private Law, Competition Law. CORRESPONDENCE ADDRESS: Zentrum für Europäische Rechtspolitik an der Universität Bremen, Universitätsallee, GW 1, 28359 Bremen, Germany. E-mail: cjoerges@zerp.uni-bremen.de

Konstantinos Kerameus
FIELD OF SPECIALISATION: Civil Procedure; International Civil Litigation; International Arbitration; European Civil and Procedural Law. CORRESPONDENCE ADDRESS: Kanari Street 8, GR-10671, Athens, Greece. E-mail: kdkeram@ath.forthnet.gr
Martine Kloepfer-Pelèse  
FIELD OF SPECIALISATION: Private Law. CORRESPONDENCE ADDRESS: Sciences Po. 27 rue Saint-Guillaume, 75337 Paris Cedex 07, France.

Ole Lando  
FIELD OF SPECIALISATION: Comparative Law, Contract Law, Private international law. CORRESPONDENCE ADDRESS: Skovlodden 26, DK 2840 Holte, Denmark. E-mail: ol.jur@cbs.dk

Yves-Henri Leleu  
FIELD OF SPECIALISATION: Family Law, Family Property Law, Comparative Law, Notarial Law, Bioethics and Medical Law. CORRESPONDENCE ADDRESS: Université de Liège, Faculté de Droit, 7 Boulevard du Rectorat, Bâtiment B31, B-4000 Liège, Belgium. E-mail: yh.leleu@ulg.ac.be

Marco Loos  
FIELD OF SPECIALISATION: Dutch and European Contract Law, Dutch and European Consumer Law. CORRESPONDENCE ADDRESS: Centre for the Study of European Contract Law, PO Box 1030, 1000 BA Amsterdam, the Netherlands. E-mail: m.b.m.loos@uva.nl

Brigitta Lurger  
FIELD OF SPECIALISATION: Consumer Protection; Contract Law; CISG; European Private Law; Private International Law. CORRESPONDENCE ADDRESS: Institut für Zivilrecht, Ausländisches und Internationales Privatrecht, Rechtswissenschaftliche Fakultät, Karl-Franzens-Universität Graz, Universitätsstraße 15/D4, A-8010 Graz, Austria. E-mail: brigitta.lurger@uni-graz.at

Hector MacQueen  
FIELD OF SPECIALISATION: Contract Law; Unjustified Enrichment; Intellectual Property; Legal History. CORRESPONDENCE ADDRESS: Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR, Scotland, United Kingdom. E-mail: hector.macqueen@scotlawcom.gsi.gov.uk

Chantal Mak  
FIELD OF SPECIALISATION: European Contract Law. CORRESPONDENCE ADDRESS: Centre for the Study of European Contract Law (CSECL), University of Amsterdam, PO Box 1030, 1000 BA Amsterdam, the Netherlands. E-mail: c.mak@uva.nl

Dieter Martiny  
FIELD OF SPECIALISATION: Family Law; Private International Law; Comparative Law. CORRESPONDENCE ADDRESS: Max-Planck-Institut für
About the Authors

Mustapha Mekki
FIELD OF SPECIALISATION: Private Law, Legal Theory, Sociology of Law, Banking Law. CORRESPONDENCE ADDRESS: Faculté de Droit, Université Paris 13, 99, Avenue J.B. Clément, 93430 Villetaneuse, France. E-mail: musmekki@yahoo.fr

Peter-Christian Müller-Graff
FIELD OF SPECIALISATION: Private Law, Commercial Law and Economic Law, Law of the European Communities and the European Union, Comparative Law. CORRESPONDENCE ADDRESS: Ruprecht-Karls-Universität Heidelberg, Institut für Gesellschafts- und Wirtschaftsrecht, Friedrich-Ebert-Platz 2, D-69117, Heidelberg, Germany. E-mail: p.mueller-graff@igw.uni-heidelberg.de

Vernon V. Palmer
FIELD OF SPECIALISATION: Comparative Law, Civil Law, French Law, Obligations, Delict, European Legal Studies. CORRESPONDENCE ADDRESS: Tulane Law School, 6329 Freret Street, New Orleans, LA 70118, USA. E-mail: vpalmer@law.tulane.edu

Edgar du Perron
FIELD OF SPECIALISATION: European Tort Law. CORRESPONDENCE ADDRESS: Centre for the Study of European Contract Law (CSECL), University of Amsterdam, PO Box 1030, 1000 BA Amsterdam, the Netherlands. E-mail: c.e.duperron@uva.nl

Jacobien Rutgers
FIELD OF SPECIALISATION: European private law, in particular the interaction between European law and private law, Contract Law, Security Interests, Private International Law. CORRESPONDENCE ADDRESS: Department of Private Law, Faculty of Law, VU University, De Boelelaan 1105, 1081 HV Amsterdam, the Netherlands. E-mail: j.w.rutgers@vu.nl

Rodolfo Sacco
FIELD OF SPECIALISATION: Contract law; Comparative law; African law. CORRESPONDENCE ADDRESS: University of Turin, Dipartimento di Scienze giuridiche, Via S. Ottavio n. 54, 10124, Torino, Italy.

Vincent Sagaert
FIELD OF SPECIALISATION: Property Law, Security Law, Law of Obligations. CORRESPONDENCE ADDRESS: Institute for Property Law, Tiensestraat 41, 3000 Leuven, Belgium. E-mail: vincent.sagaert@law.kuleuven.be
Arthur Salomons
FIELD OF SPECIALISATION: Dutch and European Property Law. CORRESPONDENCE ADDRESS: Centre for the Study of European Contract Law, Faculty of Law, University of Amsterdam, PO Box 1030, 1000 BA, Amsterdam, the Netherlands. E-mail: a.f.salomons@uva.nl

Christoph Schmid
FIELD OF SPECIALISATION: European Private and Economic Law. CORRESPONDENCE ADDRESS: Zentrum für Europäische Rechtspolitik an der Universität Bremen, Universitätsallee, GW 1, 28359 Bremen, Germany. E-mail: schmid@zerp.uni-bremen.de

Alain-Laurent Verbeke
FIELD OF SPECIALISATION: Contract and Property Law; Estate Planning; Negotiation and ADR. CORRESPONDENCE ADDRESS: University of Leuven Faculty of Law, Tiensestraat 41, B 3000 Leuven, Belgium. E-mail: alain.verbeke@law.kuleuven.be; www.alainverbeke.be

Gerhard Wagner
FIELD OF SPECIALISATION: Tort Law; Contract Law; Civil Procedure; Dispute Resolution. CORRESPONDENCE ADDRESS: Universitaet Bonn, Rechts- und Staatswissenschaftliche Fakultaet, Adenauerallee 24-42, D-53113 Bonn, Germany. E-mail: g.wagner@uni-bonn.de.

Stephen Weatherill
FIELD OF SPECIALISATION: European Law, Consumer Law, Competition Law. CORRESPONDENCE ADDRESS: Somerville College, Oxford OX2 6HD, United Kingdom. E-mail: stephen.weatherill@law.ox.ac.uk

Franz Werro
FIELD OF SPECIALISATION: Contract Law; Tort Law; European and Comparative Private Law. CORRESPONDENCE ADDRESS: Département de droit privé, 11, Avenue de Beauregard, 1700 Fribourg, Switzerland. E-mail: Franz.Werro@unifr.ch or fgw@law.georgetown.edu

Thomas Wilhelmsson
FIELD OF SPECIALISATION: contract and tort law, private law theory, european private law. CORRESPONDENCE ADDRESS: University of Helsinki, POBox 4, 00014 University of Helsinki, Finland. E-mail: thomas.wilhelmsson@helsinki.fi

Reinhard Zimmermann
FIELD OF SPECIALISATION: The law of obligations and succession in historical and comparative perspective; mixed legal systems. CORRESPONDENCE ADDRESS: Max-Planck-Institut für ausländisches und internationales Privatrecht, Mittelweg 187, D-20148 Hamburg, Germany. E-mail: r.zimmermann@mpipriv.de