



## UvA-DARE (Digital Academic Repository)

### Who's afraid of sustainability? A primer for mainstreaming sustainability in private law education

Leone, C.

**DOI**

[10.4324/9781032662046-6](https://doi.org/10.4324/9781032662046-6)

**Publication date**

2024

**Document Version**

Final published version

**Published in**

Routledge Handbook of Private Law and Sustainability

**License**

Article 25fa Dutch Copyright Act (<https://www.openaccess.nl/en/policies/open-access-in-dutch-copyright-law-taverne-amendment>)

[Link to publication](#)

**Citation for published version (APA):**

Leone, C. (2024). Who's afraid of sustainability? A primer for mainstreaming sustainability in private law education. In M. Santos Silva, A. Nicolussi, C. Wendehorst, P. S. Coderch, M. Clément, & F. Zoll (Eds.), *Routledge Handbook of Private Law and Sustainability* (pp. 84-100). (Routledge environment and sustainability handbooks). Routledge. <https://doi.org/10.4324/9781032662046-6>

**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.

*UvA-DARE is a service provided by the library of the University of Amsterdam (<https://dare.uva.nl>)*

# 5

## WHO'S AFRAID OF SUSTAINABILITY? A PRIMER FOR MAINSTREAMING SUSTAINABILITY IN PRIVATE LAW EDUCATION

*Candida Leone*<sup>1</sup>

### 5.1 Introduction

If you are reading this book, you may have acquired a sense that private law is part of the problem – an aggravating factor in the ongoing climate and broader ecological crisis.<sup>2</sup> While sustainability is increasingly on the agenda of private law research, efforts to systematically integrate the theme in private law teaching appear to raise significant challenges of practical and theoretical nature. The chapter aims to address some of these challenges. First, how to square appropriate consideration of such a large-scale problem with classical tenets of legal certainty and justice between the parties, without falling into a reductionism similar to Law and Economics analysis? Second, how to include sustainability-related issues without (excessively) sacrificing traditionally ‘core’ content, so often put under pressure by workload, student numbers, and other curriculum transformations? And in doing the latter, how to prevent polarization? Given the central position of private law in (unsustainable) legal practices, the challenge of doing our part in educating ‘climate-conscious’ legal practitioners is one we cannot avoid.<sup>3</sup>

This chapter tackles the challenges laid out above in two parts, roughly connecting to theoretical and educational/practical questions, respectively. The first part succinctly articulates ways in which we can think of sustainability in order to make sense of its role in private law; first, it shows that ‘weak’ sustainability is relatively easy to incorporate once we, on the examples of leading contemporary European private law theories, make room for pluralism; second, it presents ‘stronger’ versions of sustainability by means of emerging sustainability-oriented, care-based approaches often neglected in general private law theory. This should make it easier to overcome the uncertainties of those students and colleagues currently convinced that private law has and should have nothing to do with sustainability. The second part will combine insights from emerging literature on integrating sustainability in education at large and from contemporary work on legal education to provide a high-level but operational and modular blueprint for incorporating sustainability in European private law curricula. While none of the very significant discussion on climate litigation (a great source of class material!) is addressed, attention will be paid to the role the Sustainable

Development Goals (henceforth SDGs) can play as a vehicle to ‘codify’ sustainability for core private law education. Key focal points on this part, however, will be not (only) questions regarding what to incorporate into the existing curricula but, in particular, issues of methodology and forms of instruction and assessment. The aim of this chapter is not forwarding one specific approach, but rather to review available insights and provide an accessible set of tools to facilitate the incorporation of sustainability by those lecturers who are *not* directly engaging with the subject in their research or core concerns.

Not all readers of – or even contributors to – this book will embrace the more radical readings presented in this chapter. The present overview, hence, seeks to provide insight for both those who embrace stronger, system-changing notions of sustainability and for colleagues who prefer ‘weaker’ sustainability, mainly achieved by reforming current practices to make them less unsustainable. At the same time, the chapter assumes that legal education treating the approaches as complementary is ultimately an almost unavoidable solution if students are to be meaningfully educated on sustainability within the material and (broadly intended) disciplinary boundaries of legal education.<sup>4</sup>

## **5.2 Thinking about Private Law and Sustainability**

When I asked students in a course on *Principles of Private Law* to define what private law was about, an often-recurring answer was that private law is the law concerned with private interest, or even better, the law where the public interest does not matter.<sup>5</sup> Balancing interests between the parties marked the boundaries of the subject in these definitions. This is, of course, a widely shared intuition among private lawyers. However, it is an intuition that we should not accept as given and that deserves an open challenge if we are to incorporate sustainability in education. Fortunately, challenges abound in contemporary debates; here, I will limit myself to some that are currently prominent in the (European) English-language debate.

Discussions about the normative underpinnings of private law have been flourishing over the past decades. A major trigger for such debates has been the process of ‘Europeanisation’ of formerly largely self-sufficient national private law systems.<sup>6</sup> In this context, it is by now common to juxtapose the traditional non-instrumental orientation of national private law systems with the ‘regulatory’ function of the so-called ‘European private law’.<sup>7</sup> Of course, we know that this is a simplification. Not only do the national systems display a broader array of concerns than (formal) corrective justice, but it is also becoming clear that European private law does not entirely disregard the ‘private law perspective’.<sup>8</sup> Europeanization, however, has, without doubt, brought the tensions to the forefront.<sup>9</sup> While in North America the response to instrumentalization has been marked by a host of theories essentially claiming that ‘private law’s only goal is to be private law’,<sup>10</sup> European theory and practice seem to have more comfortably aligned in accepting that a degree of pluralism characterizes the foundations of contemporary private laws.

### **5.2.1 Pluralism and Weak Sustainability**

As far as European private law theory is concerned, while a considerable stream of literature has emphasized the contrast between ‘traditional’, corrective justice-oriented, national private laws and ‘instrumental’ European private law, it seems significant that recent ambitious attempts at theorization have sought to push the distinction into the background, foregrounding that *multiple reasons* characterize core questions of private law irrespective of where the legislative answers to such questions are to be located. In this way, for instance, Hesselink has shown how, as a matter of

existing positive law, it is impossible to trace back current European contract law<sup>11</sup> to one unified goal or set of goals. Furthermore, Grundmann, Micklitz, and Renner's 'New private law theory',<sup>12</sup> which acknowledges politics and constitutional arrangements as both one of the ways and as one of the *reasons* giving shape to contemporary private laws, may be seen as even more pluralist in foregrounding the possibility of local variations.

These theorizations seem to ultimately resonate with more doctrinal practices. For instance, in 2008–2009, the editors of the Common Frame of Reference ('CFR') identified 'freedom, security, justice and efficiency' as the four foundational principles that would, one can imagine, guide interpretation/understanding of the model rules.<sup>13</sup> At the same time, they included a long list of additionally relevant principles ranging from good faith to human rights, not all of which could be easily traced back to justice between the parties and legal certainty.<sup>14</sup> Neither the mainstream theorizations above nor the CFR<sup>15</sup> give significant space to sustainability. This fact, however, should be seen as a reminder of the contextual limitations of those efforts more than as a sign that sustainability is not part of private law (theory).<sup>16</sup>

If any of the projects above were started today, it seems unlikely that they would omit to engage with sustainability. Given the proliferation of initiatives to make consumption, production, and exchanges less unsustainable,<sup>17</sup> it seems hard to claim today that at least a 'weak' notion of sustainability would not be part of the broad palette of principles and goals<sup>18</sup> informing contemporary private laws in Europe. Such 'weak' notion of sustainability is the one most clearly reflected in projects that aim to use private law to facilitate sustainable consumption, accelerate the development of sustainable technologies, or design good financial assets to incentivize carbon or biodiversity offsets. Reporting obligations, aimed at 'making sustainability profitable' via market signalling, seem to go in a similar direction. While acknowledging the urgency of legal, technological, and economic mobilization towards more sustainable human societies, this notion of sustainability does not foreground absolute limits or envisage deep reconsiderations of current structures.<sup>19</sup>

From Hesselink's perspective, it seems especially relevant to notice how these developments have elicited tense disagreements as to the exact contours and content of the binding force of contract (right to repair),<sup>20</sup> public policy in contract law (due diligence obligations),<sup>21</sup> and the protection of weaker parties (for instance, in the debate on distributing the burdens of the energy transition).<sup>22</sup>

Grundmann et al.,<sup>23</sup> in particular, place much emphasis on the relevance of constitutional frameworks for the development of contemporary private laws and theories. From their perspective, hence, the question can be asked regarding the extent to which sustainability can be considered an emerging constitutional principle. In this respect, it seems fair to say that legal systems may differ. However, it would be hard to ignore the accelerating developments at both national<sup>24</sup> and international levels. In particular, the 2022 United Nations declaration of the human right to a clean, healthy, and sustainable environment<sup>25</sup> can be expected to increasingly reverberate, through human and fundamental rights discourses, in private law systems across the continent.<sup>26</sup> Within the European legal order, it has further been argued that Article 11 TFEU on promoting sustainable development across EU policies could be used as a point of reference for European private law.<sup>27</sup> In this context, the specific parameters and targets associated with individual SDGs can be used as an anchoring point to translate the idea of sustainable development to private law doctrines (see *infra* 3.1). This is consistent with the so-called 'environmental integration principle'.<sup>28</sup>

From the comparative doctrinal perspective incorporated in the DCFR, the doctrinal 'discovery' of a principle of sustainability can also take place bottom-up, by induction. The principle could be abstracted from the ever-growing list of legislative proposals and instruments that aim to incorporate sustainability-related concerns in private relations. Where sustainability is not

explicitly adopted as a principle by private law legislation, this ‘avenue to sustainability’ may suit the disciplinary sensitivity of some European private lawyers better than the constitutional or any other top-down approach. At the same time, sustainability seems to be emerging as an explicitly acknowledged higher-level principle *within private law*. Granted, no system in Europe seems to go as far as the Chinese civil code, which includes a provision according to which ‘[w]hen conducting a civil activity, a person of the civil law shall act in a manner that facilitates conservation of resources and protection of the ecological environment’.<sup>29</sup> While often criticized as aspirational, this provision – which is further specified in other articles of the Code – appears quite innovative and has sparked a wealth of works aiming to unravel its systematic function.<sup>30</sup> Some movement in a similar direction, however, seems to be taking place on the continent as well. For instance, the recent Belgian reform of property law explicitly aims to start a sustained engagement with sustainability.<sup>31</sup>

### **5.2.2 Strong Sustainability: Rethinking Private Law’s Foundations**

If sustainability in a weak sense is hence relatively easy to incorporate in contemporary understandings of the foundations of private law, it is important to highlight that a host of emerging theoretical perspectives foreground stronger notions of sustainability. Such is the case of contemporary critical approaches, which emphasize how climate change (and environmental degradation) challenge private law’s ability to see its ‘abstract conceptual foundations – the autonomous individual, legal personality, legal right, security, boundary, alienability, exclusion, fault, agreement, limited liability, etc. – [as] theoretically unaffected by materiality’.<sup>32</sup> Sustainability best resonates with projects emphasizing care and obligation over liberal individualist frameworks, which have been predominant in modern private laws.<sup>33</sup> Obligation, in this context, is not cast as a top-down, vertical relation in the sense of state-centred or religious orders. Rather, it is presented and constructed as an acknowledgement of our human vulnerability and hence as ‘obedience to the needs of ecological solidarity’, which explicates its functions in horizontal interactions in a way that is even morally prior to political obligation.<sup>34</sup> In contrast to accounts based on autonomy and granularity (emphasizing privity of contract, strict relativity of tortious liability, and the absolute nature of ownership, etc.), thus, contemporary critique grounded in sustainability centres expanded notions of obligations and solidarity.<sup>35</sup> However, by embracing broad notions of mutual and systemic interdependence (often ‘entanglement’) that consider human and non-human lives as part of the relevant systems,<sup>36</sup> these accounts also go beyond traditional discourses of solidarity in private law<sup>37</sup> as well as beyond current attempts to draw ‘relational’ liberal approaches.<sup>38</sup> Such approaches all embrace ‘strong’ notions of sustainability which foreground the need for human activity to be clearly positioned within earth systems and function within planetary boundaries.<sup>39</sup> In these accounts, avoiding climate collapse is but one prominent example of urgent reasons to rethink humans’ terms of engagement with the planet and each other.<sup>40</sup>

## **5.3 Sustainable Alignment**

Let us assume that by this point we have accepted that sustainability is sufficiently relevant to private law to deserve a place in education. How to go about it? It must be first acknowledged that this debate does not happen in a vacuum. On the one hand, there is growing literature on the broad topic of integrating sustainability in education; on the other hand, debates on the goals and contents of (academic) legal education also seem on the rise across systems. In this chapter, while aware that other approaches are conceivable,<sup>41</sup> I tentatively place the broad contribution of legal

education to integrating sustainability into higher education within the ‘sustainability competencies’ approach relied on, for instance, by KU Leuven.<sup>42</sup> I also rely on certain assumptions concerning legal education and sustainability. Both approaches will be briefly discussed below.

At the institutional level, educating students towards sustainability has two main prongs that can be identified.<sup>43</sup> Firstly, developing and offering *specialization* through courses and programmes specifically centred on sustainability. And secondly, incorporating sustainability into the ‘core’ of existing programmes, in alignment with fundamental subjects offered in that programme. If education is to meaningfully contribute to a sustainable transformation, both prongs need to be pursued at the same time. This is necessary in order to overcome the idea of the environment, and hence environmental problems, as being ‘outside of human communities’. For law, this means overcoming the idea that ‘environmental questions’ are essentially a matter for ‘environmental law’ and hence irrelevant to other (i.e., most) legal domains.<sup>44</sup>

Private law education, given its position at the ideal and factual core of most legal curricula – in particular, at the LLB level – bears a particularly pressing responsibility when it comes to overcoming the separation between human activities and environmental concerns and hence ‘mainstreaming’ sustainability. While specialized courses or even programmes like ‘Private law and sustainable development’ are certainly conceivable, our prior efforts should be directed to fundamental courses that all students take in their first years and that contribute to shaping their most basic understandings of how the law relates to the social – and planetary! – whole. Hence, in line with the reference to ‘mainstreaming’ in the chapter’s title, the following sections are written with mainly *core law programme* courses in mind – the ones that all students at a certain faculty are expected to pass in order to get a basic (academic) law degree.

### ***5.3.1 Background: Sustainability Competencies and Developments in Legal Education***

‘Sustainability competencies’, as a term and strategy, seek to capture and organize various sorts of learning objectives connected to sustainability.<sup>45</sup> Law as a discipline more or less inherently reflects two such competencies, namely, systems thinking and normative competencies.<sup>46</sup> Wiek et al. define systems thinking as ‘the ability to collectively analyse complex systems across different domains (society, environment, economy, etc.) and across different scales (local to global)’. Such ability is necessary in order to understand, in essence, what factors keep a certain state of things in place and what factors make it ‘move’ in one or the other direction (that is, to more or less sustainable transformations).<sup>47</sup> This requires understanding ‘structure, function, cause-effect relations, but also perceptions, motives, decisions, and regulations’.<sup>48</sup> Normative competence, in turn, is defined as the ability to ‘collectively map, specify, apply, reconcile and negotiate sustainability values, principles, goals, and targets’.<sup>49</sup> Thus understood, normative competence is indeed crucial to navigating the implications of the climate crisis for societies: values and goals must be recognized, articulated, and consciously negotiated.<sup>50</sup> Environmental degradation is acknowledged by most as a problematic fact. However, because it is a phenomenon on a global scale, it is not uncontroversial to claim that it directly justifies normative conclusions regarding ethical obligations for individuals.

At the same time, the existence of discord as to such normative conclusions in contemporary societies requires an ability to mediate between interests, goals, and values. As such, private law is a particularly fertile ground to see how these tensions play out.

As lawyers, we are familiar with both notions of systematic reasoning and normative exercises. Compared to the way these are defined in the context of sustainability, in law, we usually conceive



these competencies in a more self-referential way of course – as related to the legal system as such and to a specific type of disagreement about norms (most often, their interpretation). However, in terms of the build-up of such competencies – requiring knowledge, skills, and a certain attitude-forming<sup>51</sup> – there is no essential difference between what we do and what we should do to begin to incorporate sustainability education throughout the curriculum. This, at least, is true to the extent that we understand legal education to entail more than knowledge of selected fields of positive law.

I have argued elsewhere<sup>52</sup> that sustainable legal education, applied to private law, requires openings in line with the ones advocated for by Grundmann, Micklitz, and Renner<sup>53</sup> for private law theory. These include

- a openness to interdisciplinarity, meaning in this case selecting reading materials going beyond standard handbook/style, in order to clearly show the connection between private law and ecological questions;
- b awareness of comparative insights, meaning taking cases and developments *from wherever they happen* as starting point for discussion;
- c problem-oriented incorporation of theory: while discussions should focus on concrete questions in order to ‘land’ (see *infra*), students’ learning should be supported by at least an understanding that practical developments happen against a wide host of debates questioning the nature and roles of law and even science at large;
- d avoiding state-centredness, that is, taking relevant codes of conduct, model bylaws for sustainable enterprises, internal rules for commons management, and so forth, when available, just as seriously as code rules;
- e taking critique of private law seriously, that is, at the very least reminding students that, for over a century now, the idea that private law rules are distributionally neutral has been challenged, and this is well beyond the later regulated domains of consumer and labour contracts.<sup>54</sup>

Such opening facilitates both systems thinking – by showing interactions and interdependences – and normative competencies – by ‘naturally’ presenting students with disagreements, diverging paths and sometimes stark conflicts. Classical nationally oriented, purely positivist handbooks purporting to authoritatively present (and exhaust) the state of the discussion cannot suffice, as mainstreaming sustainability at the necessary tempo requires learning from all the available knowledge sources and jurisdictions.<sup>55</sup>

The five tenets above mean, essentially, that lecturers should choose (but also: should feel free to choose!) materials that fit thematically without distinguishing too sharply between current positive law and ‘future perspectives’ or local and seemingly ‘exotic’ practices. Doing so will likely mean choices concerning what is ‘core’ content in institutional courses will have to be partially reconsidered – if public order or causation are taking on different meanings, it could be that other topics will have to take less space. While making such choices may be difficult and at times painful, it should not scare us – important issues have always had to be left out and priorities have already shifted in past times.

Crucially, the call for diversification that emerges from the picture painted in this section does not stand in a vacuum. For, besides growing appeals to incorporate sustainability in the law school curriculum in general, more explicit emphasis on ‘knowledge, skills and attitude’ is a broad trend in legal education.<sup>56</sup> In particular, persistent trends to incorporate professional skills have revealed the implicit forms of skills training characterizing different varieties of legal education and hence challenge us to articulate them more explicitly. Additionally, such engagement with ‘external’

actors also pushes law schools to openly ask who their interlocutors should be – and to realize that traditional legal professions are but one part of their societal counterparts. This calls for a broadly plural legal education.<sup>57</sup>

In the following sub-sections, the elements above are no longer individually addressed; rather, I present three ‘levels’ of engagement with sustainability in core private law courses, followed by a short reflection on the need for, and possible approaches to, examination.

Starting point is that every private law course will usually begin with introducing fundamental principles, e.g., for contract law, freedom of contract, reliance/*pacta sunt servanda*, relativity, or privity. On the one hand, the *critique* of these principles with an eye to sustainability is a helpful starting point for students to be put in a position to make sense of further connections.<sup>58</sup> Starting with pointing out the unsustainability of currently employed solutions rather than jumping to normative claims about what sustainability would require seems like a prerequisite to avoid immediate polarization in the classroom.<sup>59</sup> On the other hand, from a pluralist perspective, sustainability is clearly an emerging normative concern (see above) affecting the legislative and judicial development of private legal orders. Thus, evolving notions of public order<sup>60</sup> would be one relatively seamless way to introduce the Chinese ‘green principle’ example with a comparative approach. While educators may not all agree on the specific direction and extent of changes that confronting unsustainability will require, opening to critique and any approaches, such as comparison, that suggest the contingency of current arrangements, will help empower students to think that change is possible.<sup>61</sup>

### 5.3.2 *One Well-Rounded Session*

In order for students to take sustainability seriously while acknowledging their multiple diverging sources of pressure and motivation, an idea is emerging in the literature that it helps if the angle is not presented as external but internal to the legal framework – it should be presented as part of the contemporary legal panorama and not as a side thought or fringe perspective.<sup>62</sup> Ong has suggested that an ‘incorporation of no more than two or three lecture contact hours within each of the “core”/compulsory subjects of the standard English university law curriculum’ would already be a meaningful starting point in integrating sustainability.<sup>63</sup> While in most core courses it is going to be impossible to entirely redraw a module (or significant portions thereof) in line with sustainability ambitions, it is wise to make sure that the discussion does not remain at the level of general principles. Several experiences point out the need for focusing on examples that allow us to both illustrate and problematize the relationship between the broad subject discussed and sustainability.<sup>64</sup>

Introducing small case studies is a feasible approach that requires little time and makes the connections visible and relatable. In the common law context, Ong mentions, for instance, ‘the potential for nuisance and/or negligence to remedy environmental damage’,<sup>65</sup> property law and ‘nature conservation covenants’,<sup>66</sup> contract law, and the incorporation of environmental undertakings within contracts.<sup>67</sup> In light of the EU’s commitment to sustainable development (see above), private law courses across the Union should be able to concretize sustainability standards through the United Nations ‘SDGs’ and their specific targets. In particular, SDG 12 concerning ‘Sustainable consumption and production patterns’ seems relevant to a broad range of private law topics. To give but a few examples:

- the connection between target 12.5 on waste and property regimes, including the so-called ‘product stewardship’ or extended producer responsibility, could be integrated into courses on property law<sup>68</sup>;



- target 12.6 on sustainable practices and sustainability reporting for (larger) companies could be the starting point for discussing developments in company law;
- target 12.8 on (consumer) information and awareness concerning sustainable lifestyles could be integrated into various ways in contract law, especially in the general parts discussing, e.g., notions of contractual information;
- the intellectual property and especially licensing implications of target 12.a on knowledge transfer between richer and ‘developing’ countries<sup>69</sup> would help make the notions of ‘special contracts’ more relatable for young students.

In general, all these examples require a somewhat in-context approach but still have the advantage of making the subject matter salient and relatable for students. In some cases, they will also allow students to see forms of interdisciplinary literature review integrated into legal research.<sup>70</sup>

For education systems that rely more on application-oriented instruction, cases based on ongoing or recent litigation, domestically and (see Section 5.3.1) abroad, can be used as examples or help build case-based questions to be discussed in class or assigned as practice (see Section 5.3.5 on the crucial matter of examination). While connecting to global trends and goals such as the SDGs contributes to pointing at the systemic position of private law in sustainability transitions, students should be clearly invited to recognize the normative tensions underlying such transitions: who will bear the brunt once low-quality, non-repairable products disappear from European markets?

### **5.3.3 *Developing a Theme***

In some cases, the above could be used as starting point for longer-spanning engagement. The best way to make students engage with sustainability and fully appreciate the connection between private law and the environmental crisis would likely be a well-designed form of problem-solving-based learning. For instance, students could be tasked with drafting enforceable contract conditions for a university that seeks to make its ICT compartment more sustainable but struggles to bind its suppliers to circular business models.<sup>71</sup>

Consistent incorporation can also take place in more traditional, topic-based teaching. Depending on the course, it may be advisable to choose one specific theme (e.g., circular economy and movables or owner obligations and land law) to be developed over time, or to include several examples (an overview course on institutions of private law could fish from several of the suggestions above). One thing that is important, however, is to consider how connections that seem obvious to the instructors may not be as clear to students – an observation that calls for making clear choices even at the cost of sacrificing very real complexity.<sup>72</sup>

How the theme is to be developed depends at this stage on the sensitivities, background, and resources of individual (groups of) instructors. While a one-off session will probably only leave enough space to reflect with students on what *is* happening in private law in reaction to increased awareness of the ongoing ecological breakdown, sustained engagement with a theme could give more space for open discussions on what *should* happen: even with a large group, students could be prompted to discuss in groups (outside the classroom!) and propose in class *one* change to the current rules, inspired by comparative examples or literature presented in the course.

### **5.3.4 *Taking the Critique into Practice***

Today’s students will ‘conduct their entire practice in a web of climate law’<sup>73</sup> – and in general in a world where sustainability is no longer a niche subject. This doesn’t take away that the practice

of private law is not providing a continuously sustained contribution to the maintenance and flourishing of unsustainable economic activities.<sup>74</sup> While both the strategies indicated above can be implemented by merely introducing students to weak notions of sustainability, this may not be enough to educate sustainable legal professionals and legally trained citizens. Acknowledging this requires taking a critical look at the relationship between academic legal education and – in particular, corporate – legal practice. Questions of legal ethics may need to be discussed within substantive private law courses: which clients, whose interests are to be represented<sup>75</sup> are questions that private lawyers are less familiar with than, to give an obvious example, those involved in criminal law practice. Asking students to reflect on these questions would be a way to make them engage with the literature on ‘strong’ sustainability in a way that is both meaningful and ‘graspable’ from the perspective of non-academics. While we know that many graduates end up elsewhere than in the traditional legal professions, these classical figures are likely to feature strongly in the imagination of students. Is it professionally acceptable to claim, as Shell’s defence once did, that climate change does not necessarily represent a human rights threat because of air conditioning?<sup>76</sup> What would the students have done as judges in a controversial case?

### **5.3.5 Assessment**

As lecturers, we can learn from day-to-day interaction that many students are intrinsically interested and motivated when it comes to environmental crises and sustainability.<sup>77</sup> With this fact in mind, the good news is that incorporating sustainability can improve engagement and learning outcomes: it aligns the learning environment with something which is important for many students outside the classroom.<sup>78</sup> Generic interest, however, does not necessarily translate into academic engagement with assigned material, nor does it, in any case, apply to all students, especially in the context of institutions of mass higher education.<sup>79</sup> Thus, to make their incorporation meaningful, sustainability-related components should be just as examinable as the rest of the course. As observed by a student in the context of a recent experiment, ‘climate change isn’t optional’; hence, it is misleading and ultimately counterproductive to treat climate/sustainability teaching as non-examinable material.<sup>80</sup> This will sound obvious to some but it goes directly against a common intuition concerning the status of ‘new’ or ‘diverging’ material – for instance, in the course/experiment just mentioned the content had been marked as mandatory but non-examinable.

Depending on the level, cohort size, and methods of instruction, different forms of examination should be put in place. Not all are equally apt to test systems thinking and normative competencies as outlined above, but all will contribute to sustainability literacy to an extent. In some cases, it will be the usual competencies that are tested, but then with sustainability as integrated content; only certain more advanced forms of examinations, like research papers (systems thinking) or open-ended questions and take-home exams (normative competence), seem capable of integrating key sustainability competences in testing. Instructors should be aware of these limitations – which may well be encapsulated in institutional policies as to levels of learning attainments during different years of instruction<sup>81</sup> – when outlining their learning goals and assessment structure.

A ‘case’ question is going to work well in certain settings, e.g., where relevant case law has been discussed in class, including when such case law was originally situated in a different legal system. How would a case with similar facts be treated in the system the student is situated in? A question on the assigned literature can work in other settings, e.g., where instruction generally focuses more on conceptual structures than on case-solving. A personal reflection, which the student is required to connect to the readings or class discussion, can offer an ‘easy’ way to test when the examination structure offers no space for either of the former (e.g., in return for a bonus point!). These approaches

could be combined. The so-called ‘Plymouth model’, for example, includes a full-fledged workbook with different types of practice assignments suitable for bachelor’s instruction.<sup>82</sup> At Master/advanced levels, in contrast, normative essay questions would seem more appropriate with a view to the different learning goals normally associated with graduate-level studies. A case note could be explicitly required to address the judgement’s sustainability dimension, provided sufficient background has been established. Finally, while ‘role-playing’ is often seen as something belonging to the realm of simulations or experiential learning, it can also be considered as a way to draft engaging exam questions for individual students.<sup>83</sup> Implicitly, what has been said so far is a call for plural examination and assessment techniques, not necessarily within one course but throughout the (basic) degree. This is, again, broadly in line with general trends in legal education, and as in other contexts it is significantly a matter of resources, as such depending on local contexts.

## 5.4 Conclusion

A concern with sustainability features in any plausible version of private law to be shared with students in contemporary law programmes. While weak sustainability can be readily embraced as an emerging legal principle, attention to critical accounts of private law points to stronger versions of sustainability that would call for a more far-reaching reimagining of the discipline. Sustainability-trained law students should acquire both a sufficiently articulate understanding of the multiple ways in which private law intersects with our ability to bring human societies to work within planetary boundaries and of the normative stakes involved in the necessary transitions. No individual private law course should carry all the burden for the necessary work. The chapter, however, has suggested that at least a weak understanding of sustainability can be meaningfully furthered with small interventions on conditions that they be made relatable and accessible and openly address the *stakes* and competing interests involved. While stronger notions of sustainability may still be controversial, the chapter suggests an initial step towards most systemically sustainable legal education would be to focus on undergoing shifts in professional ethics within core private law courses. Finally, while students (*qua young people*) are often intrinsically motivated when it comes to climate change, meaningful incorporation in education will require inclusion in the assessment structure. We are literally being put through an exacting test anyway.

## Notes

- 1 I would like to thank, in particular, Marija Bartl, Yannick van den Berg, Francesca Episcopo, and the two anonymous peer reviewers for comments on various versions of the chapter. Thanks also to the editors for their work in putting together the volume, screening submissions, and keeping us on schedule despite the obvious challenges of a large collection. All remaining errors and unaddressed limitations remain my own only.
- 2 Arguably, this goes well beyond private law – recent critiques have focussed on the overall idea of liberal *rights* as being fundamentally inapt to ground viable legal approaches to the Anthropocene. In this sense, several contributions have sought to re-conceptualize notions of *obligation* instead – see Kathleen Birrell and Daniel Matthews, ‘Re-Storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter’ [2020] 31 *Law and Critique* 275 (<https://doi.org/10.1007/s10978-020-09274-8>); Scott Veitch, *Obligations: New Trajectories in Law* (London, Routledge 2021).
- 3 Kim Bouwer et al., ‘“Climate Change Isn’t Optional”: Climate Change in the Core Law Curriculum’ [2022] 43(2) *Legal Studies* 240 (<https://doi.org/10.1017/lst.2022.35>).
- 4 See the overview and reflections in Geneviève Saumier, ‘SDG 12: Sustainable Consumption and Production’ in Ralf Michaels et al (eds), *The Private Side of Transforming our World* (Cambridge, Intersentia 2021).
- 5 Similarly, but not uncritically, Jan M Smits, *Advanced Introduction to Private Law* (Cheltenham, Edward Elgar Publishing 2016) 1.

- 6 See, e.g., Ralf Michaels and Nils Jansen, ‘Private Law beyond the State? Europeanization, Globalization, Privatization’ [2006] 54 *The American Journal of Comparative Law* 843; Martijn W Hesselink, *The New European Legal Culture* (Alphen aan den Rijn, Kluwer Law International BV 2002).
- 7 Christoph U Schmid, ‘The Thesis of the Instrumentalisation of Private Law by the EU in a Nutshell’ in Tommi Ralli and Christian Joerges (eds), *European Constitutionalism without Private Law: Private Law without Democracy, Recon Report* (2011); Ralf Michaels, ‘Of Islands and the Ocean: The Two Rationalities of European Private Law’ in Roger Brownsword and others (eds), *The Foundations of European Private Law* (London, Hart Publishing 2011); Olha O Cherednychenko, ‘Islands and the Ocean: Three Models of the Relationship between EU Market Regulation and National Private Law’ [2021] 84(6) *The Modern Law Review* 1294 (<https://doi.org/10.1111/1468-2230.12664>).
- 8 Grigorios Bacharis and Szymon Osmola, ‘Rethinking the Instrumentality of European Private Law’ [2022] 30(3) *European Review of Private Law* 457 (<https://doi.org/10.54648/erpl2022023>); Candida Leone, ‘The Missing Stone in the Cathedral: Of Unfair Terms in Employment Contracts and Coexisting Rationalities in European Contract Law’ (PhD Law thesis, University of Amsterdam 2020).
- 9 See already Daniela Caruso, ‘The Missing View of the Cathedral: The Private Law Paradigm of European Legal Integration’ [1997] 3 *European Law Journal* 3 (<https://doi.org/10.1111/1468-0386.00017>).
- 10 Ernest J Weinrib, *Corrective Justice* (Oxford, Oxford University Press 2012); Ernest J Weinrib, *The Idea of Private Law* (Oxford, Oxford University Press 2012).
- 11 Martijn W Hesselink, *Justifying Contract in Europe: Political Philosophies of European Contract Law* (Oxford, Oxford University Press 2021). While Hesselink’s analysis focusses on contract law emanating from the EU, several of the doctrines and questions considered in the book go beyond the matters regulated by European instruments.
- 12 Stefan Grundmann, Hans Micklitz and Moritz Renner, *New Private Law Theory: A Pluralist Approach* (Cambridge, Cambridge University Press 2021).
- 13 Christian Von Bar, Eric Clive and Hans Schulte-Nölke, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference* (Munich, Sellier European Law Publishers 2009) 13 but see overall reflection on principles at p 9 ff.
- 14 Christian Von Bar, Eric Clive and Hans Schulte-Nölke, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference* (Munich, Sellier European Law Publishers 2009) 13 but see overall reflection on principles at p 9 ff.
- 15 One could, arguably, read sustainability as a consequence of combined reading of the mentioned principles of solidarity and respect for human rights – but this would already represent a somewhat charged move.
- 16 Candida Leone, ‘A Private Law Theory for Sustainable Legal Education?’ [2022] 23(6) *German Law Journal* 881 (<https://doi.org/10.1017/glj.2022.54>).
- 17 Think of initiatives concerning the so-called ‘right to repair’ <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698869/EPRS\\_BRI\(2022\)698869\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698869/EPRS_BRI(2022)698869_EN.pdf)> accessed 26 April 2023 and the French reparability index rules <<https://repair.eu/news/the-french-repair-index-challenges-and-opportunities/>>, the Corporate Sustainability Reporting Directive: Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] OJ L322/15, and so forth.
- 18 More would need to be said about the possible need to distinguish between principles and goals and where sustainability would fit in such distinction. However, taking a pragmatic approach here, I will assume that principles and goals are to an extent interchangeable (a strong assumption) and that if efficiency can be named as a principle (like in the DCFR), then the same applies to sustainability.
- 19 See, in the context of sustainable production and consumption, Geneviève Saumier, ‘SDG 12: Sustainable Consumption and Production’ in Ralf Michaels and others (eds), *The Private Side of Transforming our World* (Cambridge, Intersentia 2021). As indicated above, the author claims that the approaches could be seen as complementary or that a ‘third way’ could be devised in line with further literature. For the sake of analytical clarity, in this chapter, I abide by the starker distinction. See further Oksana Mont, *A Research Agenda for Sustainable Consumption Governance* (Cheltenham, Edward Elgar Publishing 2019).
- 20 See reactions to the delay caused by, among others, a negative assessment by the Regulatory scrutiny board <<https://www.repaircafe.org/en/eu-delays-right-to-repair-for-at-least-six-months/>> accessed 26 April 2023. The Commission’s proposal has finally been published on 22 March 2023: Commission, ‘Proposal for a Directive of the European Parliament and of the Council on common rules promoting

- the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828' COM/2023/155 final.
- 21 See for a reconstruction of the debate Marija Bartl, 'Towards the Imaginary of Collective Prosperity in the European Union (EU): Reorienting the Corporation' [2022] 1(4) *European Law Open* 957 (<https://doi.org/10.1017/elo.2023.5>).
  - 22 See most recently *BEUC*, 'Reaping the Benefits of Renewables for Consumers' <[https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-035%20BEUC\\_position\\_paper\\_key\\_asks\\_electricity\\_market\\_design.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-035%20BEUC_position_paper_key_asks_electricity_market_design.pdf)> accessed 26 April 2023.
  - 23 Stefan Grundmann, Hans Micklitz and Moritz Renner, *New Private Law Theory: A Pluralist Approach* (Cambridge, Cambridge University Press 2021).
  - 24 See, for instance, the recent amendment to article 9(3) of the Italian constitution, according to which the Republic 'protects the environment, biodiversity and ecosystems, also in the interest of future generations' ( '*Tutela l'ambiente, la biodiversità e gli ecosistemi, anche nell'interesse delle future generazioni*' ).
  - 25 United Nations General Assembly, 'Resolution 76/300' (28 July 2022) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/442/77/PDF/N2244277.pdf?OpenElement>> accessed 26 April 2023.
  - 26 Chantal Mak, 'Human Rights in Private Law' (2022) Amsterdam Law School Research Paper No. 2022-51, Amsterdam Centre for Transformative private law Working Paper No. 2022-10 <<https://ssrn.com/abstract=4304817> or <http://dx.doi.org/10.2139/ssrn.4304817>>.
  - 27 Evelynne Terryn and Elias Van Gool, 'The Role of European Consumer Regulation in Shaping the Environmental Impact of E-Commerce' [2021] 10(3) *Journal of European Consumer and Market Law* 89; Charlotte Pavillon and Willem Van Boom, *Privaatrechtelijke Bescherming Herijkt* (Zutphen, Uitgeverij Paris 2021).
  - 28 David Mohan Ong, 'Prospects for Integrating an Environmental Sustainability Perspective within the University Law Curriculum in England' [2016] 50(3) *The Law Teacher* 276 (<https://doi.org/10.1080/03069400.2016.1262988>).
  - 29 Article 9, General Provisions on Civil Law <<http://www.npc.gov.cn/englishnpc/c23934/202012/f627aa3a4651475db936899d69419d1e/files/47c16489e186437eab3244495cb47d66.pdf>> accessed 26 April 2023.
  - 30 Tiantian Zhai and Yen-Chiang Chang, 'The Contribution of China's Civil Law to Sustainable Development: Progress and Prospects' [2019] 11(1) *Sustainability* 294 (<https://doi.org/10.3390/su11010294>); Jie Ouyang [presentation 2022], on file with the author.
  - 31 Durabilité en droit, 'La logique de durabilité dans le nouveau droit des biens – par Marie-Sophie de Clippele – Jubel' (*Jubel*, 10 March 2023) <<https://www.jubel.be/fr/la-logique-de-durabilite-dans-le-nouveau-droit-des-biens/>> accessed 26 April 2023.
  - 32 Nicole Graham, 'Teaching Private Law in a Climate Crisis' [2021] 40(3) *The University of Queensland Law Journal* 403 (<https://doi.org/10.38127/uqlj.v40i3.6047>).
  - 33 See, for instance, Scott Veitch, *Obligations: New Trajectories in Law* (London, Routledge 2021).
  - 34 Matt Stone, 'The Structures & Subjects of Obligation: On Veitch's Obligation' (*Critical Legal Thinking*, 15 December 2021) <<https://criticallegalthinking.com/2021/12/15/the-structures-and-subjects-of-obligation-on-veitchs-obligation/>> accessed 16 February 2023. For a more radical reading see Margaret Davies, 'Eco-Legal Bonds: On Veitch's Obligations' (*Critical Legal Thinking*, 16 December 2021) <<https://criticallegalthinking.com/2021/12/16/eco-legal-bonds-on-veitchs-obligations/>> accessed 16 February 2023.
  - 35 Kathleen Birrell and Daniel Matthews, 'Re-Storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter' [2020] 31 *Law and Critique* 275 (<https://doi.org/10.1007/s10978-020-09274-8>); Peter D Burdon, 'Obligations in the Anthropocene' [2020] 31 *Law and Critique* 309 (<https://doi.org/10.1007/s10978-020-09273-9>).
  - 36 Margaret Davies, 'Can Property Be Justified in an Entangled World?' [2020] 17(7) *Globalizations* 1104 (<https://doi.org/10.1080/14747731.2019.1650696>); Margaret Davies, 'Material Subjects and Vital Objects—Prefiguring Property and Rights for an Entangled World' [2016] 22(2) *Australian Journal of Human Rights* 37 (<https://doi.org/10.1080/1323238X.2016.11910941>).
  - 37 Such as, to only mention the French context, the discussions referred to by Denis Mazeaud, 'Loyauté, Solidarité, Fraternité: La Nouvelle Devise Contractuelle?' [1999] *Mélanges Terré* 603; Christophe Jamin, 'Plaidoyer Pour Le Solidarisme Contractuel' [2001] *Le contrat au début du XXIème siècle* 441.
  - 38 See, e.g., Hanoch Dagan, *A Liberal Theory of Property* (Cambridge, Cambridge University Press 2021); Hanoch Dagan and Avihay Dorfman, 'Justice in Contracts' [2022] 67(1) *The American Journal of Jurisprudence* 1 (<https://doi.org/10.1093/ajj/auac001>).



- 39 Louis J Kotzé and others, 'Earth System Law: Exploring New Frontiers in Legal Science' (2022) 11 *Earth System Governance* 100126.
- 40 Particularly powerful: Nancy Fraser, *Cannibal Capitalism: How Our System Is Devouring Democracy, Care, and the Planet and What We Can Do About It* (Verso Books 2022).
- 41 See several references in Kim Bouwer et al., "'Climate Change Isn't Optional': Climate Change in the Core Law Curriculum" [2022] 43(2) *Legal Studies* 240 (<https://doi.org/10.1017/lst.2022.35>). Also, for a very comprehensive collection of materials, topics and insights <[https://www.sustainabilityexchange.ac.uk/sorted\\_guide\\_to\\_sustainability\\_in\\_further\\_educat](https://www.sustainabilityexchange.ac.uk/sorted_guide_to_sustainability_in_further_educat)> accessed 26 April 2023.
- 42 See <<https://duurzaamheidseducatie.paddlecms.net>> for an overview and a broad set of tools offered to educators – unfortunately on condition that they read Flemish/Dutch. I wish to thank Evelyne Terryn for pointing me to the University's well-developed sustainability policy, in particular with reference to education – see also <<https://www.kuleuven.be/duurzaamheid/sustainability/education/spotlight>> accessed 26 April 2023.
- 43 See, for instance, the 2021 'White Paper on Sustainability' by the University of Amsterdam, with two education-related prongs: number 3, on integration of sustainability within broad programmes, and number 4 on specialization. Similarly for law, Michael Mehling and others, 'Teaching Climate Law: Trends, Methods and Outlook' [2020] 32(3) *Journal of Environmental Law* 417, 419 (<https://doi.org/10.1093/jel/eqz036>).
- 44 Klaus Bosselmann, 'From Reductionist Environmental Law to Sustainability Law' in Peter D Burdon (ed), *Exploring wild law: The philosophy of earth jurisprudence* (South Australia, Wakefield Press Kent Town 2011) 204.
- 45 Aaron Redman and Arnim Wiek, 'Competencies for Advancing Transformations towards Sustainability' [2021] 6 *Frontiers in Education* 1 (<https://doi.org/10.3389/feduc.2021.785163>). The authors, relying on further literature, describe competencies as 'a complex combination of knowledge, skills, understanding, values, attitudes and desire which lead to effective, embodied human action in the world, in a particular domain'. The definition originates from Ruth Deakin Crick, 'Key Competencies for Education in a European Context: Narratives of Accountability or Care' [2008] 7 *European Educational Research Journal* 311 (<https://doi.org/10.2304/eeerj.2008.7.3.311>). The framework's suitability has been recently assessed in conversation with educators and the core tenets have been confirmed – see Katja Brundiens et al., 'Key Competencies in Sustainability in Higher Education—toward an Agreed-upon Reference Framework' [2021] 16 *Sustainability Science* 13 (<https://doi.org/10.1007/s11625-020-00838-2>).
- 46 Other competencies identified as key are anticipatory competence, strategic competence, and interpersonal competence.
- 47 See for an accessible introduction Donella H Meadows, *Thinking in Systems: A Primer* (London, Chelsea Green Publishing 2008).
- 48 Arnim Wiek, Lauren Withycombe and Charles L Redman, 'Key Competencies in Sustainability: A Reference Framework for Academic Program Development' [2011] 6 *Sustainability Science* 203, 208 (<https://doi.org/10.1007/s11625-011-0132-6>).
- 49 Arnim Wiek, Lauren Withycombe and Charles L Redman, 'Key Competencies in Sustainability: A Reference Framework for Academic Program Development' [2011] 6 *Sustainability Science* 203, 208–209 (<https://doi.org/10.1007/s11625-011-0132-6>).
- 50 See for a plea in this direction the Dutch *Wetenschappelijke Raad voor Regeringsbeleid* (Academic Council for Government Policy) in its 2023 report *Rechtvaardigheid in klimaatbeleid. Over de verdeling van klimaatkosten* (Justice in climate policy. On the distribution of climate costs), calling for a more explicit consideration of broadly speaking distributive questions associated with climate policy.
- 51 See Simon Chesterman, 'Doctrine, Perspectives and Skills for Global Practice' in William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education* (Cheltenham, Edward Elgar Publishing 2014).
- 52 Candida Leone, 'A Private Law Theory for Sustainable Legal Education?' [2022] 23(6) *German Law Journal* 881 (<https://doi.org/10.1017/glj.2022.54>).
- 53 Stefan Grundmann, Hans Micklitz and Moritz Renner, *New Private Law Theory: A Pluralist Approach* (Cambridge, Cambridge University Press 2021).
- 54 Robert L Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' [1923] 38 *Political Science Quarterly* 470.
- 55 Margaret A Young, 'Climate Change and Law: A Global Challenge for Legal Education' [2021] 40(3) *The University of Queensland Law Journal* 351 (<https://doi.org/10.38127/uqlj.v40i3.6045>).



- 56 See, for example, Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (London, Routledge 2020); Christopher Gane and Robin Hui Huang (eds), *Legal Education in the Global Context: Opportunities and Challenges* (London, Routledge & CRC Press 2016).
- 57 For further elaboration, see Marija Bartl and Candida Leone, 'The Politics of Legal Education', *The Politics of European Legal Research* (Cheltenham, Edward Elgar Publishing 2022).
- 58 Here, for instance, the work mentioned above under Section 2 could be of use.
- 59 See Anneleen Kenis and Matthias Lievens, 'Searching for 'the Political' in Environmental Politics' [2014] 23(4) *Environmental Politics* 531 (<https://doi.org/10.1080/09644016.2013.870067>). In the classroom context, <https://www.lesgevenvooreenoverduurzaamheid.be/hoofdstuk-1/14-duurzaamheid-geen-eenduidig-verhaal/141-routines-en-waarden-in-vraag-gesteld> (in Flemish).
- 60 See for an extended inquiry adopting this perspective Pierre Lequet, *L'ordre public environnemental et le contrat de droit privé* (Paris, LGDJ 2022) <https://www.lgdj.fr/l-ordre-public-environnemental-et-le-contrat-de-droit-prive-9782275108384.html> accessed 17 January 2023.
- 61 See Nicole Graham, 'Teaching Private Law in a Climate Crisis' [2021] 40(3) *The University of Queensland Law Journal* 403 (<https://doi.org/10.38127/uqlj.v40i3.6047>).
- 62 Jason Lowther and Joanne Sellick, 'Embedding Sustainability Literacy in the Legal Curriculum: Reflections on the Plymouth Model' [2016] 50(3) *The Law Teacher* 307 (<https://doi.org/10.1080/03069400.2016.1240919>).
- 63 David Mohan Ong, 'Prospects for Integrating an Environmental Sustainability Perspective within the University Law Curriculum in England' [2016] 50(3) *The Law Teacher* 276 (<https://doi.org/10.1080/03069400.2016.1262988>).
- 64 David Mohan Ong, 'Prospects for Integrating an Environmental Sustainability Perspective within the University Law Curriculum in England' [2016] 50(3) *The Law Teacher* 276 (<https://doi.org/10.1080/03069400.2016.1262988>); Jason Lowther and Joanne Sellick, 'Embedding Sustainability Literacy in the Legal Curriculum: Reflections on the Plymouth Model' [2016] 50(3) *The Law Teacher* 307 (<https://doi.org/10.1080/03069400.2016.1240919>).
- 65 The ongoing German case of *Lluya v RWE* <https://rwe.climatecase.org/en/legal#timeline> is an interesting example in this respect.
- 66 See for a recent contribution Laura Burgers and Kinanya Pijl, 'Collective Ownership and Representation in a Sustainable City' [2022] 15(3) *Erasmus Law Review* 212 (<https://doi.org/10.5553/ELR.000230>) [http://www.erasmuslawreview.nl/tijdschrift/ELR/2022/3%20\(incomplete\)/ELR-D-22-00036](http://www.erasmuslawreview.nl/tijdschrift/ELR/2022/3%20(incomplete)/ELR-D-22-00036) accessed 21 February 2023.
- 67 See 'Nederlands Tijdschrift voor Burgerlijk Recht, De doelmatigheid van contractuele toezeggingen in de verduurzaming van handelsketens | Navigator' [https://new.navigator.nl/document/id24da6ff9fe949fd8a1648bcd731ea7b?ctx=WKNL\\_CSL\\_87&tab=tekst](https://new.navigator.nl/document/id24da6ff9fe949fd8a1648bcd731ea7b?ctx=WKNL_CSL_87&tab=tekst) accessed 21 February 2023; Jennifer Ramos, 'Shifting the Mindset of Commercial Lawyers to Rewrite Contracts, to Mitigate Climate Change More Effectively in Practice: The Chancery Lane Project' [2021] 23(1) *Environmental Law Review* 3 (<https://doi.org/10.1177/14614529211000152>).
- 68 <https://www.pbl.nl/en/publications/extended-producer-responsibility>.
- 69 See, e.g., Des Gasper, Amod Shah and Sunil Tankha, 'The Framing of Sustainable Consumption and Production in SDG 12' [2019] 10(S1) *Global Policy* 83 (<https://doi.org/10.1111/1758-5899.12592>).
- 70 Evelyne Terryn and Elias Van Gool, 'The Role of European Consumer Regulation in Shaping the Environmental Impact of E-Commerce' [2021] 10(3) *Journal of European Consumer and Market Law* 89; Charlotte Pavillon and Willem Van Boom, *Privaatrechtelijke Bescherming Herijkt* (Zutphen, Uitgeverij Paris 2021).
- 71 I would like to thank Yannick van den Berg for recently bringing this example to my attention.
- 72 See Bouwer's experience trying to incorporate a broad contestation/problematisation of core notions of land law.
- 73 Kim Bouwer et al., "'Climate Change Isn't Optional': Climate Change in the Core Law Curriculum" [2022] 43(2) *Legal Studies* 240, 257 (<https://doi.org/10.1017/lst.2022.35>).
- 74 Catherine Rocchi and Camila Bustos, 'Lawyers Exacerbate the Climate Crisis: Here's How We Can Help' (American Bar Association, 28 August 2022) [https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/september-october-2022/lawyers-exacerbate-the-climate-crisis/](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/september-october-2022/lawyers-exacerbate-the-climate-crisis/) accessed 26 April 2023.
- 75 Ruth Green, 'Climate Crisis: Law Firms Can Have Major Impact through Client Work' (International Bar Association, 28 April 2022) <https://www.ibanet.org/Climate-crisis-Law-firms-can-have-major-impact-through-client-work> accessed 26 April 2023.

- 76 See para 4.4.8, Rechtbank Den Haag (26 May 2021), *ECLI:NL:RBDHA:2021:5* <<https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2021:5339>>.
- 77 Kim Bouwer et al., “‘Climate Change Isn’t Optional’: Climate Change in the Core Law Curriculum” [2022] 43(2) *Legal Studies* 240 (<https://doi.org/10.1017/lst.2022.35>).
- 78 Graham Ferris and Rebecca Huxley-Binns, ‘What Students Care about and Why We Should Care’ in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education* (Cheltenham, Routledge 2016). In this way, it may help ease the feeling expressed by many bachelor’s students that private law (in particular) is a rather *arid* subject.
- 79 See Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (London, Routledge 2020); Christopher Gane and Robin Hui Huang (eds), *Legal Education in the Global Context: Opportunities and Challenges* (London, Routledge & CRC Press 2016). In the books Introduction (p. xviii), the authors aptly define students as being ‘at the centre of a web of relations and connections throughout their legal studies’ – essentially the challenge here is to make sure that, for all students, sustainability becomes one of the nodes in that web.
- 80 Kim Bouwer et al., “‘Climate Change Isn’t Optional’: Climate Change in the Core Law Curriculum” [2022] 43(2) *Legal Studies* 240 (<https://doi.org/10.1017/lst.2022.35>).
- 81 My institution for one prescribes ranges for different levels in the Bloom taxonomy <<https://bloomstaxonomy.net>> that differ per year of instruction.
- 82 Jason Lowther and Joanne Sellick, ‘Embedding Sustainability Literacy in the Legal Curriculum: Reflections on the Plymouth Model’ (2016) 50 *The Law Teacher* 307.
- 83 Graham Ferris and Rebecca Huxley-Binns, ‘What Students Care about and Why We Should Care’ in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education* (Cheltenham, Routledge 2016) 207.

## Bibliography

- Bacharis G and Osmola S, ‘Rethinking the Instrumentality of European Private Law’ [2022] 30(3) *European Review of Private Law* 457 (<https://doi.org/10.54648/erpl2022023>)
- Bartl M, ‘Towards the Imaginary of Collective Prosperity in the European Union (EU): Reorienting the Corporation’ [2022] 1(4) *European Law Open* 957 (<https://doi.org/10.1017/elo.2023.5>)
- Bartl M and Leone C, ‘The Politics of Legal Education’, in *The Politics of European Legal Research* (Cheltenham, Edward Elgar Publishing 2022) 159
- Birrell K and Matthews D, ‘Re-Storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter’ [2020] 31 *Law and Critique* 275 (<https://doi.org/10.1007/s10978-020-09274-8>)
- Bosselmann K, ‘From Reductionist Environmental Law to Sustainability Law’ in Peter D Burdon (ed), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (South Australia, Wakefield Press Kent Town 2011) 204.
- Bouwer K, John E, Luke O and Rozhan A “‘Climate Change Isn’t Optional’: Climate Change in the Core Law Curriculum” [2022] 43(2) *Legal Studies* 240 (<https://doi.org/10.1017/lst.2022.35>)
- Brundiers K, Barth M, Cebrián G, Cohen M, Diaz L, Doucette-Remington S, Dripps W, Habron G, Harré N, Jarchow M, Losch K, Michel J, Mochizuki Y, Rieckmann M, Parnell R, Walker P and Zint M, ‘Key Competencies in Sustainability in Higher Education—Toward an Agreed-Upon Reference Framework’ [2021] 16 *Sustainability Science* 13 (<https://doi.org/10.1007/s11625-020-00838-2>)
- Burdon PD, ‘Obligations in the Anthropocene’ [2020] 31 *Law and Critique* 309 (<https://doi.org/10.1007/s10978-020-09273-9>)
- Burgers L and Pijl K, ‘Collective Ownership and Representation in a Sustainable City’ [2022] 15(3) *Erasmus Law Review* 212 (<https://doi.org/10.5553/ELR.000230>)
- Caruso D, ‘The Missing View of the Cathedral: The Private Law Paradigm of European Legal Integration’ [1997] 3 *European Law Journal* 3 (<https://doi.org/10.1111/1468-0386.00017>)
- Cherednychenko OO, ‘Islands and the Ocean: Three Models of the Relationship between EU Market Regulation and National Private Law’ [2021] 84(6) *The Modern Law Review* 1294 (<https://doi.org/10.1111/1468-2230.12664>)
- Chesterman S, ‘Doctrine, Perspectives and Skills for Global Practice’ in van Caenegem W and Hiscock M (eds), *The Internationalisation of Legal Education* (Cheltenham, Edward Elgar Publishing 2014)
- Dagan H, *A Liberal Theory of Property* (Cambridge, Cambridge University Press 2021)

- Dagan H and Dorfman A, 'Justice in Contracts' [2022] 67(1) *The American Journal of Jurisprudence* 1 (<https://doi.org/10.1093/ajj/auac001>)
- Davies M, 'Material Subjects and Vital Objects—Prefiguring Property and Rights for an Entangled World' [2016] 22(2) *Australian Journal of Human Rights* 37 (<https://doi.org/10.1080/1323238X.2016.11910941>)
- , 'Can Property Be Justified in an Entangled World?' [2020] 17(7) *Globalizations* 1104 (<https://doi.org/10.1080/14747731.2019.1650696>)
- , 'Eco-Legal Bonds: On Veitch's Obligations' (*Critical Legal Thinking*, 16 December 2021) <<https://criticallegalthinking.com/2021/12/16/eco-legal-bonds-on-veitchs-obligations/>>
- Deakin Crick R, 'Key Competencies for Education in a European Context: Narratives of Accountability or Care' [2008] 7 *European Educational Research Journal* 311 (<https://doi.org/10.2304/eej.2008.7.3.311>)
- Ferris G and Huxley-Binns R, 'What Students Care about and Why We Should Care' in Maharg P and Maughan C (eds), *Affect and Legal Education* (Cheltenham, Routledge 2016) 195
- Gane C and Hui Huang R, *Legal Education in the Global Context: Opportunities and Challenges* (London, Routledge & CRC Press 2016)
- Gasper D, Shah A and Tankha S, 'The Framing of Sustainable Consumption and Production in SDG 12' [2019] 10(S1) *Global Policy* 83 (<https://doi.org/10.1111/1758-5899.12592>)
- Graham N, 'Teaching Private Law in a Climate Crisis' [2021] 40(3) *The University of Queensland Law Journal* 403 (<https://doi.org/10.38127/uqlj.v40i3.6047>)
- Green R, 'Climate Crisis: Law Firms Can Have Major Impact through Client Work' (International Bar Association, 28 April 2022) <<https://www.ibanet.org/Climate-crisis-Law-firms-can-have-major-impact-through-client-work>>
- Grundmann S, Micklitz H and Renner M, *New Private Law Theory: A Pluralist Approach* (Cambridge, Cambridge University Press 2021)
- Hale RL, 'Coercion and Distribution in a Supposedly Non-Coercive State' [1923] 38 *Political Science Quarterly* 470
- Hesselink MW, *The New European Legal Culture* (Alphen aan den Rijn, Kluwer Law International BV 2002)
- , *Justifying Contract in Europe: Political Philosophies of European Contract Law* (Oxford, Oxford University Press 2021)
- Jamin C, 'Plaidoyer Pour Le Solidarisme Contractuel' [2001] *Le contrat au début du XXIème siècle* 441
- Jones E and Cownie F, *Key Directions in Legal Education: National and International Perspectives* (London, Routledge 2020)
- Kenis A and Lievens M, 'Searching for 'the Political' in Environmental Politics' [2014] 23(4) *Environmental Politics* 531 (<https://doi.org/10.1080/09644016.2013.870067>)
- Leone C, 'The Missing Stone in the Cathedral: Of Unfair Terms in Employment Contracts and Coexisting Rationalities in European Contract Law' (PhD Law thesis, University of Amsterdam 2020)
- , 'A Private Law Theory for Sustainable Legal Education?' [2022] 23(6) *German Law Journal* 881 (<https://doi.org/10.1017/glj.2022.54>)
- Lequet P, *L'ordre public environnemental et le contrat de droit privé* (Paris, LGDJ 2022)
- Lowther J and Sellick J, 'Embedding Sustainability Literacy in the Legal Curriculum: Reflections on the Plymouth Model' [2016] 50(3) *The Law Teacher* 307 (<https://doi.org/10.1080/03069400.2016.1240919>)
- Mak C, 'Human Rights in Private Law' (2022) Amsterdam Law School Research Paper No. 2022-51, Amsterdam Centre for Transformative private law Working Paper No. 2022-10 <<https://ssrn.com/abstract=4304817> or <http://dx.doi.org/10.2139/ssrn.4304817>>
- Mazeaud D, 'Loyauté, Solidarité, Fraternité: La Nouvelle Devise Contractuelle?' [1999] *Mélanges Terré* 603
- Meadows DH, *Thinking in Systems: A Primer* (London, Chelsea Green Publishing 2008)
- Mehling M, van Asselt H, Kulovesi K and Morgera E, 'Teaching Climate Law: Trends, Methods and Outlook' [2020] 32(3) *Journal of Environmental Law* 417, 419 (<https://doi.org/10.1093/jel/eqz036>)
- Michaels R, 'Of Islands and the Ocean: The Two Rationalities of European Private Law' in Brownsword R, Micklitz HG, Niglia L and Weatherill S (eds), *The Foundations of European Private Law* (London, Hart Publishing 2011) 139
- Michaels R and Jansen N, 'Private Law beyond the State? Europeanization, Globalization, Privatization' [2006] 54 *The American Journal of Comparative Law* 843
- Mohan Ong D, 'Prospects for Integrating an Environmental Sustainability Perspective within the University Law Curriculum in England' [2016] 50(3) *The Law Teacher* 276 (<https://doi.org/10.1080/03069400.2016.1262988>)

- Mont O, *A Research Agenda for Sustainable Consumption Governance* (Cheltenham, Edward Elgar Publishing 2019)
- Pavillon C and Van Boom W, *Privaatrechtelijke Bescherming Herijkt* (Zutphen, Uitgeverij Paris 2021)
- Ramos J, 'Shifting the Mindset of Commercial Lawyers to Rewire Contracts, to Mitigate Climate Change More Effectively in Practice: The Chancery Lane Project' [2021] 23(1) *Environmental Law Review* 3 (<https://doi.org/10.1177/14614529211000152>)
- Redman A and Wiek A, 'Competencies for Advancing Transformations towards Sustainability' [2021] 6 *Frontiers in Education* 1 (<https://doi.org/10.3389/feduc.2021.785163>)
- Rocchi C and Bustos C, 'Lawyers Exacerbate the Climate Crisis: Here's How We Can Help' (*American Bar Association*, 28 August 2022) <[https://www.americanbar.org/groups/environment\\_energy\\_resources/publications/trends/2022-2023/september-october-2022/lawyers-exacerbate-the-climate-crisis/](https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2022-2023/september-october-2022/lawyers-exacerbate-the-climate-crisis/)>
- Saumier G, 'SDG 12: Sustainable Consumption and Production' in Michaels R, Ruiz Abou-Nigm V and van Loon H (eds), *The Private Side of Transforming our World* (Cambridge, Intersentia 2021) 383
- Schmid CU, 'The Thesis of the Instrumentalisation of Private Law by the EU in a Nutshell' in Ralli T and Joerges C (eds), *European Constitutionalism Without Private Law: Private Law Without Democracy, Recon Report* (2011)
- Smits JM, *Advanced Introduction to Private Law* (Cheltenham, Edward Elgar Publishing 2016)
- Stone M, 'The Structures & Subjects of Obligation: On Veitch's Obligation' (*Critical Legal Thinking*, 15 December 2021) <<https://criticallegalthinking.com/2021/12/15/the-structures-and-subjects-of-obligation-on-veitchs-obligation/>>
- Terryn E and Van Gool E, 'The Role of European Consumer Regulation in Shaping the Environmental Impact of E-Commerce' [2021] 10(3) *Journal of European Consumer and Market Law* 89
- Veitch S, *Obligations: New Trajectories in Law* (London, Routledge 2021)
- Von Bar C, Clive E and Schulte-Nölke H, *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference* (Munich, Sellier European Law Publishers 2009)
- Weinrib EJ, *Corrective Justice* (Oxford, Oxford University Press 2012)
- , *The Idea of Private Law* (Oxford, Oxford University Press 2012)
- Wiek A, Lauren Withycombe and Charles L Redman, 'Key Competencies in Sustainability: A Reference Framework for Academic Program Development' [2011] 6 *Sustainability Science* 203 (<https://doi.org/10.1007/s11625-011-0132-6>)
- Young MA, 'Climate Change and Law: A Global Challenge for Legal Education' [2021] 40(3) *The University of Queensland Law Journal* 351 (<https://doi.org/10.38127/uqlj.v40i3.6045>)
- Zhai T and Chang Y, 'The Contribution of China's Civil Law to Sustainable Development: Progress and Prospects' [2019] 11(1) *Sustainability* 294 (<https://doi.org/10.3390/su11010294>)