



**UvA-DARE (Digital Academic Repository)**

**The missing stone in the Cathedral**

*Of unfair terms in employment contracts and coexisting rationalities in European contract law*

Leone, C.

[Link to publication](#)

*Creative Commons License (see <https://creativecommons.org/use-remix/cc-licenses/>):*

**Other**

*Citation for published version (APA):*

Leone, C. (2020). *The missing stone in the Cathedral: Of unfair terms in employment contracts and coexisting rationalities in European contract law.*

**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.

## Bibliography

- Adam, Patrice. 'L'individualisation Du Droit Du Travail: Essai Sur La Réhabilitation Du Salarié-Individu'. PhD Thesis, Nancy 2, 2001.
- Adomeit, Klaus. 'Die Gestörte Vertragsparität - Ein Trugbild'. *NJW*, 1994, 2467.
- Annuß, Georg. 'Arbeitsrechtliche Aspekte von Zielvereinbarungen in Der Praxis'. *Neue Zeitschrift Für Arbeitsrecht (NZA)*, S 290 (2007).
- Antonmattei, Paul-Henri. *Les Clauses Du Contrat de Travail*. Wolters Kluwer France, 2009.
- Ariely, Dan. *Predictably Irrational*. Harper Audio New York, NY, 2008.
- Atiyah, Patrick Selim. *Essays on Contract*. 2nd revised. Oxford University Press, 2012.
- — —. *The Rise and Fall of Freedom of Contract*. Vol. 1. Oxford University Press, USA, 1979.
- Aubrée, Yves. 'Contrat de Travail-Existence-Formation'. *Encyclopédie Dalloz, Répertoire de Droit Du Travail*, no. 75 (2014).
- Auvergnon, Philippe. *La Contractualisation Du Droit Social: Actes Du Séminaire International de Droit Comparé Du Travail, Des Relations Professionnelles et de La Sécurité Sociale*, 2003.
- Auzero, Gilles, and Florence Canut. 'Le Juge et La Modification Du Contrat de Travail/The Judge and the Modification of the Employment Contract'. *Droit Social*, no. 1 (2017): 11.
- Ayres, Ian, and Alan Schwartz. 'Remedies for the No Read Problem in Consumer Contracting'. In *Stanford Law Rev*, 2013.
- Azzaro, Andrea. *I Contratti Non Negoziati*. Esi, 2000.
- Bakos, Yannis, Florencia Marotta-Wurgler, and David R. Trossen. 'Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts'. *The Journal of Legal Studies* 43, no. 1 (2014): 1–35.
- Bar-Gill, Oren. *Seduction by Contract: Law Economics, and Psychology in Consumer Markets*, 2012.
- Barral-Viñals, Immaculada. 'Aziz Case and Unfair Contract Terms in Mortgage Loan Agreements: Lessons to Be Learned in Spain'. *Penn St. JL & Int'l Aff.* 4 (2015): 69.
- Bartl, Marija. 'Internal Market Rationality: In the Way of Re-Imagining the Future'. *European Law Journal* 24, no. 1 (11 February 2018): 99–115.

- — —. 'Legitimacy and European Private Law (EUI Thesis)'. Available at SSRN 2142798, 2012.
- Beale, Hugh. 'Inequality of Bargaining Power'. *Oxford Journal of Legal Studies* 6, no. 1 (1 March 1986): 123–36.
- Beale, Hugh, Bénédicte Fauvarque-Cosson, Jacobien Rutgers, and Stefan Vogenauer. *Cases, Materials and Text on Contract Law*. Bloomsbury Publishing, 2019.
- Beka, Anthi. *The Active Role of Courts in Consumer Litigation*. Intersentia, 2018.
- Benedict, Jörg. 'Der Maßstab Der AGB-Kontrolle – Oder Die Suche Nach Dem »indispositiven Leitbild« im Arbeitsvertragsrecht'. *JuristenZeitung (JZ)* 67, no. 4 (2012): 172–82.
- Ben-Shahar, Omri. 'Regulation Through Boilerplate: An Apologia'. *Michigan Law Review* 112, no. 6 (1 April 2014): 883–903.
- — —. 'The Paradox of Access Justice, and Its Application to Mandatory Arbitration'. *The University of Chicago Law Review*, 2016, 1755–1817.
- Ben-Shahar, Omri, and Carl E. Schneider. *More than You Wanted to Know: The Failure of Mandated Disclosure*. Princeton University Press, 2014.
- Berlioz, Georges. *Le Contrat d'adhésion*. Vol. 132. Librairie générale de droit et de jurisprudence, 1973.
- Bessy, C. 'La Contractualisation de La Relation de Travail, Paris, LGDJ, Coll.«'. *Droit et Société», Série Économie*, 2007.
- Bessy, Christian, and Daniel Szpiro. 'The Provisions in a Labour Contract: Technology and the Market'. *Cambridge Journal of Economics* 35, no. 3 (2011): 459–81.
- Black, Julia. 'Critical Reflections on Regulation'. *Austl. J. Leg. Phil.* 27 (2002): 1.
- Brandner, H. E. 'Transparenz Als Maßstab Der Inhaltskontrolle? Ein Problemskizze'. In *Festschrift Für Horst Locher Zum 65. Geburtstag P. Löffelmann Und H. Korbion*, edited by P Löffelmann and H Korbion, 317–24. Werner-Verlag, 1990.
- Brodie, Douglas. 'The Autonomy of the Common Law of the Contract of Employment from the General Law of Contract'. In *The Contract of Employment*, edited by Mark Freedland, Alan Bogg, David Cabrelli, Hugh Collins, Nicola Countouris, A. C. L. Davies, Simon Deakin, and Jeremias Prassl. Oxford University Press, 2016.

- — —. 'The Employment Contract and Unfair Contracts Legislation' (2007). *Legal Studies* 27 (n.d.): 95–107.
- Bryman, Alan. *Social Research Methods*. Oxford University Press, 2016.
- Burton-Jones, Alan. *Knowledge Capitalism: Business, Work, and Learning in the New Economy*. OUP, 1999.
- Cafaggi, Fabrizio, and Horatia Muir Watt. *Making European Private Law: Governance Design*. Edward Elgar Publishing, 2010.
- — —. *The Regulatory Function of European Private Law*. Edward Elgar Publishing, 2009.
- Calais-Auloy, Jean, and Henri Temple. *Droit de La Consommation*. Dalloz, 2015.
- Carta, Cinzia. 'Crisis of Sectoral Collective Bargaining in Germany'. *Lavoro e Diritto*, no. 4/2019 (2019).
- — —. 'La Crisi Della Contrattazione Di Settore in Germania'. *Lavoro e Diritto*, no. 4/2019 (2019).
- Eurofound. 'Changes in Remuneration and Reward Systems', 6 January 2020. <https://www.eurofound.europa.eu/publications/report/2016/industrial-relations/changes-in-remuneration-and-reward-systems>.
- Chénéde, François. 'Raymond Saleilles, Le Contrat d'adhésion (2e Partie)', 2012.
- Cherednychenko, Olha O. *Fundamental Rights, Contract Law and the Protection of the Weaker Party: A Comparative Analysis of the Constitutionalisation of Contract Law, with Emphasis on Risky Financial Transactions*. Vol. 5. sellier. european law publ., 2007.
- Coester, Michael, Lore Maria Peschel-Gutzeit, Ludwig Salgo, and Helmut Engler. 'J. von Staudingers Kommentar Zum Bürgerlichen Gesetzbuch Mit Einführungsgesetz Und Nebengesetzen', 2007.
- Coester-Waltjen, Dagmar. 'Die Inhaltskontrolle von Verträgen Außerhalb Des AGBG'. *Archiv Für Die Civilistische Praxis*, 1990, 1.
- Collins, H. *Standard Contract Terms in Europe A Basis for and a Challenge to European Contract Law*, 2008.
- — —. 'The Directive on Unfair Contract Terms: Implementation, Effectiveness and Harmonization'. *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law* 15 (2008).
- Collins, Hugh. 'European Private Law and the Cultural Identity of States'. *European Review of Private Law* 3 (1995): 353.

- — —. 'European Private Law and the Cultural Identity of States'. *European Review of Private Law* 3, no. 2 (1995): 353–365.
- — —. 'Governance Implications for the European Union of the Changing Character of Private Law'. In *Making European Private Law: Governance Design*, edited by Fabrizio Cafaggi and Horatia Muir-Watt, 269–88. Cheltenham, UK: Edward Elgar Publishing Ltd, 2008.
- — —. 'Justifications and Techniques of Legal Regulation of the Employment Relation'. In *Legal Regulation of the Employment Relation*, edited by Hugh Collins, Paul L. Davies, and Roger W. Rideout, 3–28, 2000.
- — —. 'Legal Responses to the Standard Form Contract of Employment'. *Industrial Law Journal* 36, no. 1 (2007): 2–18.
- — —. *Regulating Contracts*. Oxford University Press, 2002.
- Collins, Hugh C., Paul L. Davies, Roger W. Rideout, and W. G. Hart Legal Workshop, eds. *Legal Regulation of the Employment Relation*. London: Kluwer Law International, 2000.
- Collins, Hugh, Gillian Lester, and Virginia Mantouvalou. *Philosophical Foundations of Labour Law*. Oxford University Press, 2018.
- Comparato, Guido. 'Public Policy through Private Law: Introduction to a Debate on European Regulatory Private Law'. *Eur. LJ* 22 (2016): 621.
- Countouris, Nicola. *The Changing Law of the Employment Relationship: Comparative Analyses in the European Context*. Routledge, 2016.
- Coutu, Michel, Martine Le Friant, and Gregor Murray. 'Broken Paradigms: Labor Law in the Wake of Globalization and the Economic Crisis'. *Comp. Lab. L. & Pol'y J.* 34 (2012): 565.
- Couturier, Gerard. 'Les Techniques Civilistes et Le Droit Du Travail'. *Recueil Dalloz*, 1975, 151;222.
- Cseres, Katalin J. 'The Regulatory Consumer in EU and National Law? Case Study of the Normative Concept of the Consumer in Hungary and Poland'. *Yearbook of Antitrust and Regulatory Studies (YARS)* 9, no. 13 (2016): 9–41.
- Däubler, Wolfgang. *Arbeitsrecht: Ratgeber Für Beruf, Praxis Und Studium*. 10th ed. Bund Verlag, 2014.
- Dauner-Lieb, Barbara. *Inhaltskontrolle Im Arbeitsrecht: Zwischen Zivilrecht Und Arbeitsrechtlichen Besonderheiten*. Baden-Baden: Nomos Verlagsgesellschaft, 2006.

- Davidov, Guy, and Brian Langille. *The Idea of Labour Law*. Oxford University Press, 2011.
- Davies, Anne CL. *EU Labour Law*. Edward Elgar Publishing, 2012.
- Davies, G. T. 'Democracy and Legitimacy in the Shadow of Purposive Competence'. *European Law Journal* 21, no. 1 (2015): 2–22.
- De Boeck, Annick, and Mark Van Hoecke. 'The Interpretation of Standard Clauses in European Contract Law'. *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law*, 2008, 201–244.
- Deakin, Simon, and Wanjiru Njoya. 'The Legal Framework of Employment Relations'. *The Sage Handbook of Industrial Relations*, 2008, 284–304.
- Deakin, Simon, and Frank Wilkinson. *The Origins of the Contract of Employment*. Oxford University Press, 2005.
- Defer, Camille. 'Les Droits Potestatifs Dans Le Contrat de Travail'. PhD thesis Paris II, 2016. <https://docassas.u-paris2.fr/nuxeo/site/esupversions/c78d8cf5-5358-4a33-8c13-9e8120f4dfe0?inline>.
- Del Sol, Marion. 'Le Contrat de Travail: Instrument de Flexibilité et / Ou de Résistance?' *Bulletin Social Francis Lefebvre*, 2002, 269–80.
- Dellacasa, Matteo. 'Judicial Review of "Core Terms" in Consumer Contracts: Defining the Limits'. *European Review of Contract Law* 11, no. 2 (2015): 152–176.
- Dockès, Emmanuel. 'De La Superiorité Du Contrat de Travail Sur Le Pouvoir de l'employeur'. In *Analyse Juridique et Valeurs En Droit Social: Mélanges En l'honneur de Jean Pélissier*, 203–11. Paris: Dalloz-Sirey, 2004.
- Dollat, Jacques. 'Les Contrats d'adhésion: Thèse Pour Le Doctorat'. PhD Thesis, Librairie de la Société du recueil J.-B. Sirey & du Journal du Palais, 1905.
- Domergue, Max. *Etude d'Ensemble Sur Le Contrat d'Adhésion*. Toulouse: Imprimerie Parisienne, 1935.
- Dougan, Michael. 'Minimum Harmonization and the Internal Market'. *Common Market Law Review* 37, no. 4 (2000): 853–885.
- Duin, Anna van. 'Metamorphosis? The Role of Article 47 of the EU Charter of Fundamental Rights in Cases Concerning National Remedies and Procedures under Directive 93/13/EEC'. *Journal of European Consumer and Market Law* 6, no. 5 (2017): 190–198.
- Duivenvoorde, Bram B. *The Consumer Benchmarks in the Unfair Commercial Practices Directive*. Vol. 5. Springer, 2015.

- Dukes, Ruth. 'Constitutionalizing Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law'. *Journal of Law and Society* 35, no. 3 (2008): 341–363.
- . 'Hugo Sinzheimer and the Constitutional Function of Labour Law'. *The Idea of Labour Law*, 2011, 57–68.
- . *The Labour Constitution: The Enduring Idea of Labour Law*. Oxford Monographs on Labour La, 2014.
- Dustmann, Christian, Bernd Fitzenberger, Uta Schönberg, and Alexandra Spitz-Oener. 'From Sick Man of Europe to Economic Superstar: Germany's Resurgent Economy'. *Journal of Economic Perspectives* 28, no. 1 (February 2014): 167–88.
- Ebers, Martin. 'Unfair Contract Terms Directive (93/13)'. *The Consumer Acquis and Its Transposition in the Member States*, 2008, 341–438.
- Elizalde, Francisco de. 'Partial Invalidation for Unfair Terms? CJEU in Abanca - C-70 & 179/17'. *Journal of European Consumer and Market Law* 8, no. 4 (1 September 2019): 147–49.
- Everson, Michelle. 'From Effet Utile to Effet Neoliberal: Why Is the ECJ Hazarding the Integrity of European Law?' *European Constitutionalism without Private Law-Private Law without Democracy*, RECON Report, no. 14 (2011): 37–54.
- Fabre, Alexandre. *Le Régime Du Pouvoir de l'employeur*. Paris: LGDJ, 2010.
- Faure, Michael G., and Hanneke A. Luth. 'Behavioural Economics in Unfair Contract Terms'. *Journal of Consumer Policy* 34, no. 3 (1 September 2011): 337–58.
- Fauvarque-Cosson, Bénédicte. 'The New Provisions on Conditions in the UNIDROIT Principles 2010'. *Unif. L. Rev.* 16 (2011): 537.
- Fontaine, Marcel, and Jacques Ghestin. *La Protection de La Partie Faible Dans Les Rapports Contractuels. Comparaisons Franco-Belges*, 1996.
- Freedland, Mark. 'Private Law, Regulation and Governance Design and the Personal Work Contract'. In *Making European Private Law: Governance Design*, 227, 2010.
- Gardner, John. 'The Contractualisation of Labour Law'. In *Philosophical Foundations of Labour Law*, edited by Hugh Collins, Gillian Lester, and Virginia Mantouvalou. Oxford, 2018.
- Gaudemet, Sophie. *La clause réputée non écrite*. Economica, 2004.

- Gaudu, François, and Raymonde Vatinet. *Les Contrats Du Travail*. Traité Des Contrats Dir J. Ghestin. Paris: LGDJ, 2001.
- Gerstenberg, Oliver. 'Constitutional Reasoning in Private Law: The Role of the CJEU in Adjudicating Unfair Terms in Consumer Contracts'. *European Law Journal* 21, no. 5 (2015): 599–621.
- Gordley, James. 'Equality in Exchange'. *Calif. L. Rev.* 69 (1981): 1587.
- Gras, Nicolas. 'Essai Sur Les Clauses Contractuelles', 2014.
- Gratton, Laurène-Kirstie. *Les Clauses de Variation Du Contrat de Travail*. Thèses. Dalloz, 2011.
- Hanau. 'Die Rechtsprechung Zu Den Arbeitsrechtlichen Besonderheiten'. In *Festschrift Für Horst Konzen Zum Siebzigsten Geburtstag*, edited by Barbara Dauner-Lieb, 249–65. Mohr Siebeck, 2006.
- Häsemeyer, Ludwig. 'Geltungserhaltende Oder Geltungserstörende Reduktion'. *Festschrift Für Peter Ulmer Zum 70 (n.d.):* 1097.
- Hatzis, Aristides N. 'An Offer You Cannot Negotiate: Some Thoughts on the Economics of Standard Form Consumer Contracts'. In *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law*, edited by H. Collins, 15:43–56, 2008.
- Heinrichs, Helmut. 'Das Transparenzgebot Und Die EG-Richtlinie Über Mißbräuchliche Klauseln in Verbraucherverträgen'. *Lebendiges Recht–Von Den Sumerern Bis Zur Gegenwart, Festschrift Für Reinhold Trinkner Zum 65 (1995):* 157–177.
- — —. 'Missbräuchliche Klauseln in Verbraucherverträgen'. In *Lebendiges Recht–von Den Sumerern Bis Zum Gegenwart, Festschrift Für Reinhold Trinkner Zum 65. Geburtstag*, edited by Otto Sandrock and Friedrich Graf von Westphalen, 157. Verlag Recht und Wirtschaft, 1995, n.d.
- Hellwege, Phillip. *Allgemeine Geschäftsbedingungen, Einseitig Gestellte Vertragsbedingungen Und Die Allgemeine Rechtsgeschäftslehre*. Vol. 148. Mohr Siebeck, 2010.
- — —. 'It Is Necessary to Strictly Distinguish Two Forms of Fairness Control!' *Journal of European Consumer and Market Law* 4, no. 4 (2015): 129–134.
- Hensen, Hans-D. 'Zu Entstehung des AGB-Gesetzes'. In *Recht im Spannungsfeld von Theorie und Praxis: Festschrift für Helmut Heinrichs zum 70. Geburtstag*, edited by Andreas Heldrich, Peter Schlechtriem, and Eike Schmidt, 1st ed., 335–54. München: C.H.Beck, 1998.



- Henssler, Martin, and Wilhelm Moll. *AGB-Kontrolle Vorformulierter Arbeitsbedingungen*. Beck, 2011.
- Hesselink, M. W. 'The Concept of Good Faith'. In *Towards a European Civil Code*, edited by A. S. Hartkamp, M. W. Hesselink, E. H. Hondius, C. Mak, and C. E. du Perron, 4th ed. Kluwer Law International, 2011.
- Hesselink, Martijn W. *CFR & Social Justice*. Walter de Gruyter, 2009.
- . 'ECJ–Freiburger Kommunalbauten v Hofstetter'. *European Review of Contract Law* 2, no. 3 (2006): 366–375.
- . 'Private Law, Regulation, and Justice'. *European Law Journal* 22, no. 5 (2016): 681–695.
- . 'The New European Legal Culture', 2001.
- . 'Unfair Terms in Contracts between Businesses'. In *Towards a European Contract Law*, edited by Schulz, Reiner and Stuyck, Jules, 131–148. Sellier European Law Publishers, 2011.
- Hillman, Robert A. 'The Rhetoric of Legal Backfire'. *BCL Rev.* 43 (2001): 819.
- Hobsbawm, Eric. *The Age of Empire: 1875-1914*. London: Abacus, 1994.
- . *The Age of Extremes: 1914-1991*. London: Abacus, 1995.
- Hondius, Ewoud. 'The Protection of the Weak Party in a Harmonised European Contract Law: A Synthesis'. *Journal of Consumer Policy* 27, no. 3 (2004): 245–251.
- Hondius, Ewoud H. 'EC Directive on Unfair Terms in Consumer Contracts: Towards a European Law of Contract'. *Journal of Contract Law*, 1994, 34–52.
- Howells, Geraint, and Gert Straetmans. 'The Interpretive Function of the CJEU and the Interrelationship of EU and National Levels of Consumer Protection'. *Perspectives on Federalism* 9, no. 2 (2017): E–180.
- Howells, Geraint, Thomas Wilhelmsson, and Roger Brownsword. *Welfarism in Contract Law*. Dartmouth, 1994.
- Hoyningen-Huene, Gerick von. 'Unwirksamkeit von AGB Bei Bloßer Intransparenz'. In: *Lebendiges Recht–Von Den Sumerern Bis Zur Gegenwart Festschrift Für Reinhold Trinkner, Heidelberg*, 1995, 171–191.
- Jacobi, Erwin. *Betrieb Und Unternehmen Als Rechtsbegriffe*. Weicher, 1926.
- Jacobs, Antoine. 'Collective Self-Regulation'. *The Making of Labour Law in Europe*, London, Mansell, 1986.
- Jaussaud, Robert-Edouard, Paul Durand, and R. Jaussaud. *Traité de Droit Du Travail*. Dalloz, 1947.

- Jeammaud, Antoine. 'Le Contrat de Travail, Une Puissance Moyenne'. In *Analyse Juridique et Valeurs En Droit Social : Mélanges En l'honneur de Jean Pélissier*, 299–329. Paris: Dalloz-Sirey, 2004.
- — —. *Les Polyvalences Du Contrat de Travail*, 1989.
- Jeammaud, Antoine, Martine Le Friant, and Antoine Lyon-Caen. 'L'ordonnancement Des Relations de Travail'. *Recueil Dalloz*, 1998, 359–368.
- Joerges, Christian. 'The Europeanisation of Private Law as a Rationalisation Process and as a Contest of Disciplines—an Analysis of the Directive on Unfair Terms in Consumer Contracts'. *European Review of Private Law* 3, no. 2 (1995): 175–191.
- Joost, Detlev. 'Allgemeine Geschäftsbedingungen Und Arbeitsvertrag—Ein Beispiel Für Eine Missglückte Gesetzgebung'. *Festschrift Für Peter Ullmer Zum 70* (n.d.): 1199–1210.
- Józón, Mónika. 'Unfair Contract Terms Law in Europe in Times of Crisis: Substantive Justice Lost in the Paradise of Proceduralisation of Contract Fairness'. *Journal of European Consumer and Market Law* 6, no. 4 (1 August 2017): 157–66.
- Kahneman, Daniel. *Thinking, Fast and Slow*. Macmillan, 2011.
- Kaiser, Bernd. 'Die Vertragsstrafe Im Wettbewerbsrecht', 1999.
- Kennedy, Duncan. 'Form and Substance in Private Law Adjudication'. *Harv. L. Rev.* 89 (1975): 1685.
- — —. 'The Political Stakes in "Merely Technical" Issues of Contract Law'. *European Review of Private Law* 10, no. 1 (2002): 7–28.
- Kessler, Friedrich. 'Contracts of Adhesion—Some Thoughts About Freedom of Contract'. *Colum. L. Rev.* 43 (1943): 629.
- Klijnsma, Josse G. 'Oneerlijke Bedingen Onder Het Voorstel Voor Een Gemeenschappelijk Europees Kooprecht: De Positie van KMO's'. *Tijdschrift Voor Consumentenrecht & Handelspraktijken (TvC)*, no. 3 (2013): 106–12.
- Köndgen, Johannes. 'Grund Und Grenzen Des Transparenzgebots Im AGB-Recht—Bemerkungen Zum "Hypothekenzins-" Und Zum "Wertstellungs-Urteil" Des BGH'. *NJW*, no. s 943 (1989).
- König, Dorothea. 'Die Inhaltskontrolle von Arbeitsverträgen in Deutschland, England Und Frankreich'. Universitätsbibliothek Freiburg, 2010.
- Korobkin, Russell. 'Bounded Rationality, Standard Form Contracts, and Unconscionability'. *U. Chi. L. Rev.* 70 (2003): 1203.

- Kötz, Hein. *European Contract Law*. Second Edition. Oxford, New York: Oxford University Press, 2017.
- Krause, Rüdiger. 'Germany: Part I: The Individual Employment Relationship'. In *International Encyclopedia for Labour Law and Industrial Relations*, edited by Roger Blanpain, 2008.
- Lakies, Thomas. *Vertragsgestaltung Und AGB Im Arbeitsrecht*. CF Müller GmbH, 2011.
- Lando, Ole. 'Liberal, Social and Ethical Justice in European Contract Law'. *Common Market L. Rev.* 43 (2006): 817.
- Langhanke, Carmen, and Martin Schmidt-Kessel. 'Consumer Data as Consideration'. *Journal of European Consumer and Market Law* 4, no. 6 (2015): 218–223.
- Law, Stephanie. 'The CJEU's Interpretation of the Consumer: What Significance of Judicial Cooperation?' In *Judicial Cooperation in European Private Law*. Edward Elgar Publishing, 2017.
- Leclerc, Frédéric. 'La Protection de La Partie Faible Dans Les Contrats Internationaux: Étude de Conflits de Lois'. PhD Thesis, Strasbourg 3, 1990.
- Leczykiewicz, Dorota, and Stephen Weatherill. *The Images of the Consumer in EU Law: Legislation, Free Movement and Competition Law*. Bloomsbury Publishing, 2016.
- Leone, Candida. 'Case Note Abanca Corporación Bancaria, S.A. v Alberto García Salamanca Santos (Grand Chamber)'. *Revue Européenne de Droit de La Consommation*, no. forthcoming (2020).
- . 'Of Private Law, Market Regulation and Telling Them Apart in the EU'. *Amsterdam Law School Research Paper* n. 2017-28 (2017).
- . 'Transparency Revisited—on the Role of Information in the Recent Case-Law of the CJEU'. *European Review of Contract Law* 10, no. 2 (2014): 312–325.
- Lieb, Manfred. 'AGB-Recht Und Arbeitsrecht Nach Der Schuldrechtsmodernisierung'. In *Festschrift Für Peter Ulmer Zum 70. Geburtstag Am 2. Januar 2003*, edited by Mathias Habersack, Peter Hommelhoff, Uwe Hüffer, and Karsten Schmidt. Walter de Gruyter, 2003.
- . 'Sonderprivatrecht Für Ungleichgewichtslagen? Überlegungen Zum Anwendungsbereich Der Sogenannten Inhaltskontrolle Privatrechtlicher Verträge'. *Archiv Für Die Civilistische Praxis*, 1978, 196.

- Litty, Olivier. *Inégalité des parties et durée du contrat: Étude de quatre contrats d'adhésion usuels*. Paris: LGDJ, 1999.
- Loiseau, Grégoire. 'Droit Civil et Droit Du Travail: Une Relation Instable'. *Droit Social*, no. 6 (2019): 477–79.
- . 'Les Clauses Abusives Dans Le Contrat de Travail'. *Cahiers Sociaux Du Barreau de Paris*, no. n°265 (July 2014): 452.
- Lokiec, Pascal. *Contrat et Pouvoir: Essai Sur Les Transformations Du Droit Privé Des Rapports Contractuels*. Paris: LGDJ, 2004.
- . *Droit Du Travail Tome I Les Relations Individuelles de Travail*. PUF. Paris, 2011.
- Lokiec, Pascal, and Judith Rochfeld. 'L'accord et Le Juge Du Travail: Le Temps Des Réformes Paradoxaes'. *Droit Social*, no. 1 (2017): 5.
- Loos, Marco B.M. *Algemene Voorwaarden*. Den Haag: Boom Juridisch Uitgever, 2018.
- Loos, Marco, and Joasia Luzak. 'Wanted: A Bigger Stick. On Unfair Terms in Consumer Contracts with Online Service Providers'. *Journal of Consumer Policy* 39, no. 1 (2016): 63–90.
- Löwisch, Manfred. 'Das Verhältnis von Arbeitsrecht Und Bürgerlichem Recht in Deutschland'. In *Das Verhältnis von Arbeitsrecht Und Zivilrecht in Japan Und Deutschland*, edited by Franz Josef Düwell, Raimund Waltermann, Rolf Wank, and Manfred Löwisch, 21. Peter Lang International Academic Publishers, 2013.
- Luth, Hanneke. 'Behavioural Economics in Consumer Policy: The Economic Analysis of Standard Terms in Consumer Contracts Revisited', 2010.
- Lyon-Caen, Antoine. 'Actualité Du Contrat de Travail, Bref Propos'. *Droit Social*, no. 7–8 (1988): 540–543.
- Lyon-Caen, Gerard. 'Du Rôle Des Principes Généraux Du Droit Civil En Droit Du Travail'. *Rev. Trim. Dr. Civ.*, 1974, 229.
- Mak, Chantal. 'First or Second Best? Judicial Law-Making in European Private Law'. *Judicial Law-Making in European Private Law (September 22, 2016)*. Centre for the Study of European Contract Law Working Paper Series, no. 2016–12 (2016).
- . 'On Beauty and Being Fair—The Interaction of National and Supranational Judiciaries in the Development of a European Law on Remedies'. In *Varieties of European Economic Law and Regulation*, 823–834. Springer, 2014.

- Marella, Maria Rosaria. 'The Old and the New Limits to Freedom of Contract in Europe'. *European Review of Contract Law* 2, no. 2 (2006): 257–274.
- Marx, Karl. 'Capital, Volume III'. *Penguin Classics*, 1993.
- Maurin, Lucien. *Contrat et Droits Fondamentaux*. Paris: LGDJ, 2013.
- Mazeaud, Denis. 'Unfairness and Non-Negotiated Terms'. R. Schulze y J. Stuyck. *Towards a European Contract Law*, 2011, 123–130.
- Mekki, M. *Le Nouvel Essor Du Concept de Clause Contractuelle (1ère Partie)*. RDC, 2006.
- Mekki, Mustapha. 'La Loi de Ratification de l'ordonnance Du 10 Février 2016. Une Réforme de La Réforme?' *Recueil Dalloz*, no. 17 (2018): 900–911.
- Meli, Marisa. 'Social Justice, Constitutional Principles and Protection of the Weaker Contractual Party'. *European Review of Contract Law* 2, no. 2 (2006): 159–166.
- Michaels, Ralf. 'Of Islands and the Ocean: The Two Rationalities of European Private Law'. *THE FOUNDATIONS OF EUROPEAN PRIVATE LAW*, Roger Brownsword, Hans-W Micklitz, Leone Niglia, Steve Weatherill, Eds., Hart Publishing, 2011.
- Micklitz, Hans-W. 'Do Consumers and Businesses Need a New Architecture of Consumer Law? A Thought Provoking Impulse'. *Yearbook of European Law* 32, no. 1 (2013): 266–367.
- . 'Mohamed Aziz-Sympathetic and Activist, but Did the Court Get It Wrong?' In *ECLN Conference Florence*, 2013.
- . 'Some Reflections on Cassis de Dijon and the Control of Unfair Contract Terms in Consumer Contracts'. In *Standard Contract Terms in Europe: A Basis for and a Challenge to European Contract Law*, 19–41. Kluwer Law International, 2008.
- . 'The Concept of Competitive Contract Law'. *Penn St. Int'l L. Rev.* 23 (2004): 549.
- . 'The Expulsion of the Concept of Protection from the Consumer Law and the Return of Social Elements in the Civil Law: A Bittersweet Polemic'. *Journal of Consumer Policy* 35, no. 3 (2012): 283–296.
- . *The Politics of Justice in European Private Law: Social Justice, Access Justice, Societal Justice*. Cambridge Studies in European Law and Policy. Cambridge: Cambridge University Press., 2018.

- — —. ‘The Principles of European Contract Law and the Protection of the Weaker Party’. *Journal of Consumer Policy* 27, no. 3 (2004): 339–356.
- — —. ‘The Visible Hand of European Regulatory Private Law—The Transformation of European Private Law from Autonomy to Functionalism in Competition and Regulation’. *Yearbook of European Law* 28, no. 1 (2009): 3.
- Micklitz, Hans-W., and Norbert Reich. ‘The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)’. *Common Market Law Review* 51, no. 3 (2014): 771–808.
- Monateri, P. G., and Alessandro Somma. ‘The Fascist Theory of Contract: A Comparative and Historical Inquiry into the Darker Side of Contract Law’. *Cardoza Electronic Law Bulletin*, 2009.
- Morgan, Bronwen. ‘The Economization of Politics: Meta-Regulation as a Form of Nonjudicial Legality’. *Social & Legal Studies* 12, no. 4 (1 December 2003): 489–523.
- Müller-Glöge, Rudi. ‘BGB § 345 Beweislast’. In *Erfurter Kommentar Zum Arbeitsrecht*, 12th ed., 2012.
- Nicola, Fernanda, and Evelyne Tichadou. ‘Océano Grupo: Missed Opportunities and a Second Life for EU Consumer Law’. In *EU Law Stories*, edited by Fernanda Nicola and Bill Davies, 369. Cambridge University Press, 2017.
- Niglia, Leone. ‘The Rules Dilemma—The Court of Justice and the Regulation of Standard Form Consumer Contracts in Europe’. *Colum. J. Eur. L.* 13 (2006): 125.
- — —. *The Transformation of Contract in Europe*. The Hague; New York: Kluwer Law International, 2003.
- Nogler, Luca. “The Historical Contribution of Employment Law to General Contract Law: A Lost Dimension?,” in *Life Time Contracts: Social Long-Term Contracts in Labour, Tenancy and Consumer Credit Law* (The Hague: Eleven International Publishing, 2014), 279–319.
- Östlund, Allison. *Effectiveness versus Procedural Protection*. Nomos Verlagsgesellschaft mbH & Co. KG, 2019.
- Pavillon, Charlotte. ‘Private Enforcement as a Deterrence Tool: A Blind Spot in the Omnibus-Directive’. *European Review of Private Law with the Proceeds of the Conference ‘A New Deal for Civil Justice*, 2019.
- Pavillon, Charlotte MDS. ‘Case Note: ECLI:EU:C:2019:250 (Abanca Corporación Bancaria)’. *Nederlandse Jurisprudentie*, 2020, 101.

- Pedersini, Roberto. 'Conclusions and Outlook More Challenges and Some Opportunities for Industrial Relations in the European Union'. In *Multi-Employer Bargaining under Pressure: Decentralisation Trends in Five European Countries*, edited by Salvo Leonardi and Roberto Pedersini, 291. European Trade Union Institute (ETUI), 2018.
- Pélissier, Jean. 'Pour Un Droit Des Clauses Du Contrat de Travail A Partir de l'arrêt Société Leviel'. *RJS* 7 (2005): 499–502.
- Pélissier, Jean, Gilles Auzero, and Emmanuel Dockès. 'Droit Du Travail, Précis Dalloz, 27e Édition 2013'. *Droit Social*, no. 10 (2012): 965.
- Pellier, Jean-Denis. 'De la distinction entre la nullité et le réputé non écrit - Banque - Crédit | Dalloz Actualité', 23 October 2019. <https://www.dalloz-actualite.fr/flash/de-distinction-entre-nullite-et-repute-non-ecrit#.XbB0J5MzbUp>.
- Pichon, Victor. *Université de Lyon. Faculté de Droit. Des Contrats d'adhésion; Leur Interprétation et Leur Nature, Thèse... Par Victor Pichon... la* "Revue judiciaire, 1912.
- Pocar, Fausto. *La Protection de La Partie Faible En Droit International Privé*. Martinus Nijhoff, 1984.
- Pomar, Fernando Gómez, and Karolina Lyczkowska. 'Spanish Courts, the Court of Justice of the European Union, and Consumer Law'. *Indret*, no. 4 (2014).
- Pound, Roscoe. 'The Role of the Will in Law'. *Harvard Law Review* 68, no. 1 (1954): 1–19.
- Powell, Walter W., and Kaisa Snellman. 'The Knowledge Economy'. *Annual Review of Sociology* 30, no. 1 (2004): 199–220.
- Preis, Ulrich. 'Ausgewählte Fragen Der AGB-Kontrolle Im Arbeitsrecht'. In *Inhaltskontrolle Im Arbeitsrecht, Zwischen Zivilrecht Und Arbeitsrechtlichen Besonderheiten*, edited by Barbara Dauner-Lieb, Henssler, Martin, and Ulrich Preis, Nomos., 64. Munich, 2006.
- Radé, Christophe. 'Entre Espoir et Desespoir'. *Droit Social*, no. 6 (2019): 475–76.
- — —. 'L'impact de La Réforme Du Droit Des Contrats En Droit Du Travail'. *Lexbase Hebdo Ed. Sociale*, no. 645 (25 February 2016).
- Radin, Margaret Jane. *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*. Princeton University Press, 2012.
- Reich, Norbert. 'European Consumer Law and Its Relationship to Private Law'. *Eur. Rev. Private L.* 3 (1995): 285.

- Reiserer, Kerstin, and Diana Fallenstein. 'Mitarbeiterbindung Und Leistungsabhängige Bonussysteme: Ein Widerspruch Oder Zulässige Praxis? (Teil I)'. *Deutsches Steuerrecht*, no. 33 (2011): 1572–76.
- Revet, Thierry. 'Les Critères Du Contrat d'adhésion'. *Recueil Dalloz*, no. 30 (2016): 1771–1778.
- Rittner, Fritz. 'Die Gestörte Vertragsparität Und Das Bundesverfassungsgericht'. *NJW*, 1994, 3330.
- Rönmar, Mia. 'The Managerial Prerogative and the Employee's Obligation to Work: Comparative Perspectives on Functional Flexibility'. *Industrial Law Journal* 35, no. 1 (2006): 56–74.
- Rösler, Hannes. 'Europeanisation of Private Law through Directives-Determining Factors and Modalities of Implementation'. *Eur. JL Reform* 11 (2009): 305.
- — —. 'Protection of the Weaker Party in European Contract Law: Standardized and Individual Inferiority in Multi-Level Private Law'. *European Review of Private Law* 18, no. 4 (2010): 729–756.
- — —. 'The Transformation of Contractual Justice: A Historical and Comparative Account of the Impact of Consumption'. *The Many Concepts of Social Justice in European Private Law* 327 (2011).
- Rouast, André, and Paul Durand. *Précis de Droit Du Travail*. Dalloz, 1963.
- Rzepecki, Nathalie. *Droit de La Consommation et Théorie Générale Du Contrat*. PU Aix-Marseille, 2015.
- Saleilles, Raymond. *De La Déclaration de Volonté: Contribution à l'étude de l'acte Juridique Dans Le Code Civil Allemand (Art. 116 à 144)*. F. Pichon, 1901.
- Sánchez, Sara Iglesias. 'Unfair Terms in Mortgage Loans and Protection of Housing in Times of Economic Crisis: Aziz v. Catalunyaacaixa'. *Common Market Law Review* 51, no. 3 (2014): 955–974.
- Schäfer, Hans-Bernd, and Patrick C. Leyens. 'Judicial Control of Standard Terms and European Private Law'. *Economic Analysis of the DCFR: The Work of the Economic Impact Group within CoPECL*, 2010, 99.
- Schebesta, Hanna, and Kai P. Purnhagen. 'The Behaviour of the Average Consumer: A Little Less Normativity and a Little More Reality in the Court's Case Law? Reflections on Teekanne'(2016)'. *European Law Review* 41 (n.d.): 589.



- Schillig, M. 'Inequality of Bargaining Power versus Market for Lemons: Legal Paradigm Change and the Court of Justice's Jurisprudence on Directive 93/13 on Unfair Contract Terms'. *European Law Review* 33 (2008): 336–358.
- Schillig, Michael. 'Directive 93/13 and the "Price Term" Exemption: A Comparative Analysis in the Light of the "Market for Lemon's" Rationale'. *International & Comparative Law Quarterly* 60, no. 4 (2011): 933–963.
- Schmid, Christoph. 'The Thesis of the Instrumentalisation of Private Law by the EU in a Nutshell'. *European Constitutionalism Without Private Law: Private Law Without Democracy, Recon Report*, no. 14 (2011): 17–36.
- Schmid, Christoph U. *The Emergence of a Transnational Legal Science in European Private Law*. JSTOR, 1999.
- Schmid, Günther. 'Labour Market Policy and Labour Law Reforms in Germany: Towards Inclusive Growth'. *International Journal of Comparative Labour Law and Industrial Relations* 35, no. 3 (2019): 305–330.
- — —. 'Sharing Risks of Labour Market Transitions: Towards a System of Employment Insurance'. *British Journal of Industrial Relations* 53, no. 1 (2015): 70–93.
- Schmidt, Karsten. 'Arbeitsrecht Als Verbraucherrecht? Methodenprobleme Des § 13 BGB Im Lichte Des BAG-Urteils Vom 25.5.2005'. In *Festschrift Für Horst Konzen Zum Siebzigsten Geburtstag*, edited by B. Dauner-Lieb, P. Hommelhoff, M. Jacobs, D. Kaiser, and B Weber, 863. Munich: Mohr Siebeck, 2006.
- Schmidt, Thomas. '„Der Arbeitnehmer-Verbraucher“- Zwischenbilanz Eines Paradigmenwechsels'. In *Tradition Und Moderne - Schuldrecht Und Arbeitsrecht Nach Der Schuldrechtsreform, Festschrift Für Horst Ehmman Zum 70. Geburtstag*, Vol. 318. Schriften Zum Bürgerlichen Recht. Berlin: Duncker & Humblot, 2005.
- Schulten, Thorsten, and Reinhard Bispinck. 'Varieties of Decentralisation in German Collective Bargaining – Experiences from Metal Industry and Retail Trade. WP CSDLE "Massimo D'Antona".INT – 137/2017'. Working Paper, 2017. <http://aei.pitt.edu/100468/>.
- Schulte-Nölke, Hans. 'No Market for "Lemons": On the Reasons for a Judicial Unfairness Test for B2B Contracts'. *European Review of Private Law* 23, no. 2 (2015): 195–216.

- Schulte-Nölke, Hans. 'No Market for "Lemons": On the Reasons for a Judicial Unfairness Test for B2B Contracts'. *European Review of Private Law* 23, no. 2 (1 April 2015): 195–216.
- Schwartz, Alan, and Louis Wilde. 'Intervening In Markets on the Basis of Imperfect Information: A Legal and Economic Analysis'. *University of Pennsylvania Law Review* 127, no. 3 (1 January 1979): 630.
- Sinay-Cytermann, Anne. 'La Protection de La Partie Faible En Droit International Privé'. *Mélangés En l'honneur de Paul Lagarde. Le Droit International Privé: Esprit et Méthodes*, 2005, 737.
- Snyder, Francis. 'Better Regulation in EU Law: Variations on a Theme'. SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, 27 March 2017. <https://papers.ssrn.com/abstract=2941341>.
- Solum, Laurence B. 'Legal Theory Lexicon 043: Formalism and Instrumentalism'. *Legal Theory Lexicon* (blog). Accessed 4 March 2020. [https://solum.typepad.com/legal\\_theory\\_lexicon/2005/05/legal\\_theory\\_le\\_1.html](https://solum.typepad.com/legal_theory_lexicon/2005/05/legal_theory_le_1.html)
- .
- Stoffels, Markus. 'Der Schutz Vor Überraschenden Vertragsbestimmungen'. *Gedächtnisschrift Für Manfred Wolf, Hrsg. von Jens Dammann, Wolfgang Grunsky, Thomas Pfeiffer, München*, 2011, 157.
- Study Group on Social Justice in European Private Law. 'Social Justice in European Contract Law: A Manifesto'. *European Law Journal* 10, no. 6 (2004): 653–74.
- Supiot, Alain. *Critique du droit du travail*. Presses Universitaires de France, 2011.
- . *Le Droit Du Travail:«Que Sais-Je?» N° 1268*. Presses Universitaires de France, 2019.
- Swennen, Frederik. *Contractualisation of Family Law-Global Perspectives*. Vol. 4. Springer, 2015.
- Tenreiro, Mario. 'The Community Directive on Unfair Terms and National Legal Systems: The Principle of Good Faith and Remedies for Unfair Terms'(1995)'. *European Review of Private Law* 3 (n.d.): 273.
- Teubner, Gunther. 'Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergencies'. *The Modern Law Review* 61, no. 1 (1998): 11–32.
- Thorpe, Richard, and Gill Homan. *Strategic Reward Systems*. Pearson Education, 2000.
- Thüsing, Gregor. *AGB-Kontrolle Im Arbeitsrecht*. Beck, 2007.

- Twigg-Flesner, Christian, Martin Ebers, and Hans Schulte-Nölke. *EC Consumer Law Compendium-Comparative Analysis*. Online version, 2008.  
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.183.3328&rep=rep1&type=pdf>.
- Van Bever, Aline. 'Goede Trouw En Belangenafweging in Het Arbeidsrecht. Toepassing Op de Eenzijdige Wijziging van Arbeidsvoorwaarden'. *Tijdschrift Voor Sociaal Recht/Revue de Droit Social*, no. 4 (2010): 469–535.
- Van Hoek, Aukje AH. 'Netherlands Report'. In *Collective Agreements and Individual Contracts of Employment in Labour Law*, edited by Michał Seweryński, 167. The Hague: Kluwer Law International, 2007.
- Veneziani, Bruno. 'The Evolution of the Contract of Employment'. *The Making of Labour Law in Europe*, 1986, 31–72.
- Veneziani, Bruno, and B. A. Hepple. *Transformation of Labour Law in Europe: A Comparative Study of 15 Countries, 1945-2004*. Hart Publishing Limited, 2009.
- Veneziani, Bruno, and Bob Hepple. 'The Making of Labour Law in Europe', 1986.
- Verhulp, Evert. 'Identity-Bound Employers and Limitations of Employees' Fundamental Rights'. *European Labour Law Journal* 2, no. 2 (2011): 166–172.
- Visser, Jelle. 'What Happened to Collective Bargaining during the Great Recession?' *IZA Journal of Labor Policy* 5, no. 1 (13 May 2016): 9.
- Waelkens, Johanna. 'Article 5 Unfair Terms Directive 93/13/EEC: Transparency and Interpretation in Consumer Contracts', 2015.
- Waquet, Philippe. 'Le Renouveau Du Contrat de Travail'. *Revue de Jurisprudence Sociale* 5, no. 99 (1999): 383–394.
- Weatherill, Stephen. *EU Consumer Law and Policy*. Edward Elgar Publishing, 2013.
- . 'The Limits of Legislative Harmonization Ten Years after Tobacco Advertising: How the Court's Case Law Has Become a "Drafting Guide"'. *German Law Journal* 12, no. 3 (2011): 827–864.
- Wedderburn, Lord. 'Labour Law and the Individual in Post-Industrial Societies'. In *Labour Law in the Postindustrial Era: Essays in Honour of Hugo Sinzheimer.*, 13. Dartmouth: Aldershot, 1994.
- Weinrib, Ernest J. *Corrective Justice*. Oxford University Press, 2012.
- Welch, Roger, and Patricia Leighton. 'Individualizing Employee Relations: The Myth of the Personal Contract'. *Personnel Review* 25, no. 5 (1996): 37–50.
- Westhoff, Stefan. *Die Inhaltskontrolle von Arbeitsverträgen: Rechtsanwendung, Rechtsfortbildung Oder Rechtspolitik; Dargest. Am Beispiel Der Kontrolle von*

- Rückzahlungs-, Befristungs-, Wettbewerbs- u. Verfallklauseln. Düsseldorf: Handelsblatt, 1975.
- Westphalen, Friedrich Graf von. 'Der (Unzulässige) Rückgriff Auf Die Ergänzende Vertragsauslegung Bei Unwirksamen Zinsänderungsklauseln'. *Monatsschrift Für Deutsches Recht* 73, no. 2 (2019): 76–82.
- Wilhelmsson, T. 'The Abuse of the "Confident Consumer" as a Justification for EC Consumer Law'. *Journal of Consumer Policy* 27, no. 3 (2004): 317.
- Wilhelmsson, Thomas. "'Social Force Majeure" — A New Concept in Nordic Consumer Law'. *Journal of Consumer Policy* 13, no. 1 (1990): 1–14.
- — —. 'Varieties of Welfarism in European Contract Law'. *European Law Journal* 10, no. 6 (2004): 712–733.
- — —. 'Various Approaches to Unfair Terms and Their Background Philosophies'. *Juridica Int'l* 14 (2008): 51.
- Willemsen, Heinz Josef, and Timon Grau. 'Alternative Instrumente Zur Entgeltflexibilisierung Im Standardarbeitsvertrag'. *Neue Zeitschrift Für Arbeitsrecht*, 2005, 1137.
- Williamson, Oliver E. 'Transaction Cost-Economics: The Governance of Contractual Relations'. *The Journal of Law & Economics*, 1979.
- Wolf, M. 'Entwicklungen Im AGB-Recht Und Ihr Einfluss Auf Das Arbeitsrecht'. In *Inhaltskontrolle Im Arbeitsrecht, Zwischen Zivilrecht Und Arbeitsrechtlichen Besonderheiten*, edited by Barbara Dauner-Lieb, Henssler, Martin, and Ulrich Preis, 11. Nomos, 2006.
- Zabel, Anne-Lise. 'Clauses Abusives et Droit Du Travail: Le Concept Issu Du Droit de La Consommation Pénètre-t-Il Le Droit Du Travail?' *Petites Affiches*, no. 13 september 2013 n.184 (2013): 6.

## Case law

### European Union

- C-376/98 *Federal Republic of Germany v European Parliament and Council of the European Union*, ECLI:EU:C:2000:544.
- C-237/02 *Freiburger Kommunalbauten GmbH Baugesellschaft & Co. KG v Ludger Hofstetter and Ulrike Hofstetter*, ECLI:EU:C: 2004:209
- C-168/05 *Mostaza Claro*, ECLI:EU:C:2006:675
- C-40/8 *Asturcom Telecomunicaciones*, ECLI:EU:C:2009:615
- C-137/08 *VB Pénzügyi Lízing*, ECLI:EU:C:2010:659
- C-542/08 *Friedrich G. Barth v Bundesministerium für Wissenschaft und Forschung, para 35, as referred to in Gutierrez Naranjo*, ECLI:EU:C:2010:193
- C-453/10 *Pereničová and Perenič*, ECLI:EU:C:2012:144
- C-472/10 *Nemzeti Fogyasztóvédelmi Hatóság v Invitel Távközlési Zrt*, ECLI:EU:C:2012:242
- C-618/10 *Banco Español de Crédito SA v Joaquín Calderón Camino*, ECLI:EU:C:2012:349.
- C-92/11 *RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen e.V.*, ECLI:EU:C:2013:180
- C-413/12 *Asociación de Consumidores Independientes de Castilla y León v Anuntis Segundamano España SL*, ECLI:EU:C:2013:800
- C-415/11 *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, ECLI:EU:C:2013:164
- C-472/11, *Banif Plus Bank*, ECLI:EU:C:2013:88
- C-488/11, *Asbeek Brusse and de Man Gabarito*, ECLI:EU:C:2013:341
- C-26/13 *Árpád Kásler, Hajnalka Káslerné Rábai v OTP Jelzálogbank Zrt*, ECLI:EU:C:2014:282
- C-226/12 *Constructora Principado SA v José Ignacio Menéndez Álvarez*, ECLI:EU:C:2014:10
- C-96/14 *Jean-Claude Van Hove v CNP Assurances SA*, ECLI:EU:C:2015:262
- C-143/13 *Bogdan Matei, Ioana Ofelia Matei v SC Volksbank România SA*, ECLI:EU:C:2015:127
- C-482/13, C-484/13, C-485/13 and C-487/13 *Unicaja Banco, SA v José Hidalgo Rueda and others & Caixabank v Manuel María Rueda Ledesma and others*, ECLI:EU:C:2015:21
- C-602/13 *Banco Bilbao Vizcaya Argentaria SA v Fernando Quintano Ujeta, María-Isabel Sánchez García*, ECLI:EU:C:2015:397

- C-154/15, C-307/15 and C-308/15 *Gutiérrez Naranjo v. Cajasur Banco, Palacios Martínez v. BBVA and Banco Popular Español v. Irlés López*, ECLI:EU:C:2016:980
- C-168/15 *Milena Tomášová v Slovenská republika – Ministerstvo spravodlivosti SR, Pohotovosť s. r. o.*, ECLI:EU:C:2016:602
- C- 191/15 *Verein für Konsumenteninformation (VKI) v Amazon*, ECLI:EU:C:2016:612
- C-260/18 *Kamil Dziubak, Justyna Dziubak v Raiffeisen Bank International AG*, ECLI:EU:C:2016:612
- C-381/14 and C-385/14 *Jorge Sales Sinués v Caixabank SA, and Youssouf Drame Ba v Catalunya Caixa SA (Catalunya Banc SA)*, ECLI:EU:C:2016:909
- C-157/15, *Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Hof van Cassatie – Belgium)*, OJ C 151, 15.5.2017
- C-186/16 *Ruxandra Paula Andriciu and Others v Banca Românească SA*, ECLI:EU:C:2017:703C-54/17
- C-55/17 *Wind Tre and Vodafone Italia*, EU:C:2018:710
- C-94/17 *Rafael Ramón Escobedo Cortés v Banco de Sabadell SA*, ECLI:EU:C:2018:643
- C-96/16 and C-94/17 *Banco Santander SA v Mahamadou Demba, Mercedes Godoy Bonet*, ECLI:EU:C:2018:643
- C-109/17 *Bankia SA v Juan Carlos Mari Merino and Others*, ECLI:EU:C:2018:735
- C-486/16 *Bankia SA v Alfredo Sánchez Martínez, Sandra Sánchez Triviño*, ECLI:EU:C:2018:728
- C-34/18, *Ottília Lovasné Tóth v ERSTE Bank Hungary Zrt*, ECLI:EU:C:2019:245
- C-34/18 *Ottília Lovasné Tóth v ERSTE Bank Hungary Zrt*, ECLI:EU:C:2019:764
- C-43/17 *Walbusch Walter Busch*, ECLI:EU:C:2019:47
- C-70/17 and C-179/17 *Abanca Corporación Bancaria and Bankia*, EU:C:2019:250
- C-349/18 to 351/18 *Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Mbutuku Kanyeba and Others*, ECLI:EU:C:2019:936
- C-590/17, *Henri Pouvin, Marie Dijoux, v Électricité de France (EDF)*, ECLI:EU:C:2019:232

## Germany

### *Bundesarbeitsgericht*

- BAG, 12.10.1960 – 3 AZR 65/59
- BAG, 29.06.1962 – 1 AZR 343/61
- BAG, 31.10.1969 – 3 AZR 119/69
- BAG, 21.12.1970 – 3 AZR 510/69

- BAG, 07.10.1982 – 2 AZR 455/80
- BAG, 23.04.1986 – 5 AZR 159/85
- BAG, 21.04.1993 – 7 ABR 44/92
- BAG, 13.12.2000 – 10 AZR 168/00
- BAG, 09.09.2003 – 9 AZR 574/02
- BAG, 04.03.2004 – 8 AZR 196/03
- BAG, 12.01.2005 – 5 AZR 364/04
- BAG, 21.04.2005 – 8 AZR 425/04
- BAG, 25.05.2005 – 5 AZR 572/04
- BAG, 18.08.2005 – 8 AZR 65/05
- BAG, 11.04.2006 – 9 AZR 523/05
- BAG, 09.05.2006 – 9 AZR 424/05
- BAG, 11.10.2006 – 5 AZR 721/05
- BAG, 23.01.2007 – 9 AZR 482/06
- BAG, 14.08.2007 – 8 AZR 973/08
- BAG, 12.12.2007 – 10 AZR 97/07
- BAG, 18.03.2008 – 9 AZR 186/07
- BAG, 30.07.2008 – 10 AZR 606/07
- BAG, 27.08.2008 – 5 AZR 820/07
- BAG, 25.09.2008 – 8 AZR 717/07
- BAG, 14.01.2009 – 3 AZR 900/07
- BAG, 06.06.2009 – 10 AZR 390/08
- BAG, 25.08.2010 – 10 AZR 275/09
- BAG, 23.09.2010 – 8 AZR 897/08
- BAG, 19.01.2011 – 10 AZR 738/09
- BAG, 14.09.2011 – 10 AZR 526/10
- BAG, 13.11.2013 – 10 AZR 848/12

*Other courts*

- RG, 06.02.1923 – III 93/22
- BGH, 24.11.1988 – III ZR 188/97
- BGH, 17.01.1989 – VI ZR 186/88
- Bundesverfassungsgericht, *Maastricht Urteil*, BVerfG 12.10.1993
- Bundesverfassungsgericht, *Bürgerschaft*, BVerfG 19.10.1993

## France

### *Cour de Cassation*

- Cass. civ. 7 décembre 2004, n° 01-11823
- Cass. civ. 23 janvier 2013, n° 10-21177
  
- Cass. comm. 22 octobre 1995, n° 93-18632.
- Cass. comm. 4 décembre 2007, n° 06-15.137
  
- Cass. soc. 18 juin 1981, n° 78-40939
- Cass. soc. 23 janvier 1985, n° 82-42992
- Cass. soc. 4 juin 1987, n° 84-43639
- Cass. soc. 31 mai 1990, n° 88-40358
- Cass. soc. 17 juillet 1991, n° 88-40201
- Cass. soc. 14 mai 1992, n° 89-45.300
- Cass. soc. 19 novembre 1997, n° 94-44784
- Cass. soc. 25 mars 1998, n° 94-20.780
- Cass. soc. 12 janvier 1999, n° 96-40755
- Cass. soc. 10 mai 1999, n° 96-45673
- Cass. soc. 18 avril 2000, n° 97-43717
- Cass. soc. 18 avril 2000, n° 97-44235
- Cass. soc. 27 février 2001, n° 99-40219
- Cass. soc. 3 juillet 2001, n° 99-42-761
- Cass. soc. 2 juillet 2002, n° 00-13111
- Cass. soc. 10 juillet 2002, n° 00-45.135
- Cass. soc. 18 juillet 2001, n° 99-44.038
- Cass. soc. 4 mars 2003, n° 01-41864
- Cass. soc. 26 janvier 2005, n° 02-47271
- Cass. soc. 4 février 2004, RJS 4/04, n° 438
- Cass. soc. 12 mai 2004, n° 02-44325
- Cass. soc. 19 mai 2004, n° 02-44671
- Cass. soc. 16 mars 2005, n° 02-47007
- Cass. soc. 20 avril 2005, n° 03-43696
- Cass. soc. 12 juillet 2005, n° 04-13342
- Cass. soc. 7 juin 2006, n° 04-45846
- Cass. soc. 18 juin 2008, n° 07-41910
- Cass. soc. 4 juin 2009, n° 07-43198
- Cass. soc. 9 février 2011 n° 09-42485
- Cass. soc. 2 mars 2011, n° 08-44977



- Cass. soc. 10 juillet 2013, n° 12-17921
- Cass. soc. 22 octobre 2015, n° 14-11291
- Cass. soc. 22 octobre 2015, n° 14-11801
- Cass. soc. 18 mars 2015, n° 13-24205
- Cass. soc. 4 novembre 2016, n° 15-18.956
- Cass. soc. 14 novembre 2018, n° 17-11.757

*Other courts*

- CA Versailles 3 juin 2008, 07/03825
- CA Pau, 14 juin 2010, 08/04305 et 08/04306

**The Netherlands**

- HR 14-09-2007, ECLI:NL:HR:2007:BA5802, m.nt. E. Verhulp

**United Kingdom**

- *OFT v Ashbourne Management Services Limited and others* [2011] EWHC 1237

## Legislation

EU legislation and preparatory acts:

Article 100 - EEC Treaty

Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, OJ No C 92, 25.04.1975

Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy, OJ No C 133, 03.06.1981

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 07.08.1985

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ L 372, 31.12.1985

Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991

Proposal for a Council Directive on unfair terms in consumer contracts COM(90) 322 final – SYN 285, submitted by the Commission on 24 July 1990

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.04.1993

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, OJ L 304, 22.11.2011

Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Amended proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, amending Regulation (EC) No 2006/2004 of the European Parliament and

of the Council and Directive 2009/22/EC of the European Parliament and of the Council and repealing Directive 1999/44/EC of the European Parliament and of the Council, 31 October 2017, COM(2017) 637 final

Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019

## German legislation and preparatory acts

AGB-Gesetz

§ 9

§ 23 (1)

BGB

§ 13

§ 242

§ 138

§ 611

§ 611a

§§ 305a, 305b and 305c

§§ 306

§ 307

§§ 308-309

§ 310

Gewerbeordnung

§ 106

Kündigungsschutzgesetz

§ 2

Zivilprozessordnung

§ 888 III

Gesetz über Teilzeitarbeit und befristete Arbeitsverträge und zur Änderung und Aufhebung arbeitsrechtlicher Bestimmungen vom 21.12.2000 – BGBl. I 2000

Gesetz zur Modernisierung des Schuldrechts vom 26.11.2001 – BGBl. I 2001

Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes und anderer Gesetze vom 21.02.2017 - BGBl. I 2017

Entwurf eines Gesetzes zur Änderung des Arbeitnehmerüberlassungsgesetzes und anderer Gesetze vom 02.06.2016 - BR Drs 294/16

Bundestagsdrucksache

BT-Drs. 7/5422

BT-Drs. 14/6040

BT-Drs. 14/6857

French legislation

Code Civil

1103 (after 2016)

1110

1134 (before 2016)

1170

1171

1193

#### Code du commerce

L 134-14

L 442-6

#### Code de la consommation

L 212-1

L 241-1

R 212-1

#### Code du travail

L. 1243-3

L. 1331-1

L. 1331-2

Loi n° 78-23 du 10 janvier 1978 *sur la protection et l'information des consommateurs de produits et de services*

Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations. Available online at: <https://www.legifrance.gouv.fr/eli/ordonnance/2016/2/10/2016-131/jo/texte> (last accessed 9 March 2020)

Rapport au Président de la République relatif à l'ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations, JORF n°0035 du 11 février 2016 texte n° 25

Loi n° 2018-287 du 20 avril 2018 *ratifiant l'ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations*

Code civil du Québec

Article 1379

## Summary

Unfair terms control is a landmark of contemporary European contract laws. How we talk about it is important to our general understanding of contract law – and arguably beyond that. Over the past decades, a very prominent debate has emerged around the so-called Unfair Terms Directive of 1993, which has harmonised the control of *non-negotiated terms in consumer contracts* across the European Union. Much attention in this context has been devoted to the *justifications* of unfair terms control. This discussion has gradually turned away from the various national paths of doctrinal discussion and has focussed on the *regulatory* features of judicial control: the elimination of market failures and, less convincingly, the advancement of social justice or consumer interests have become staple arguments and benchmarks for criticism or normative contributions. This broad engagement with ultra-individual effects has been termed *regulatory rationality*: a matter of questions asked, not of answers given. The *question* of what basic contractual justice requires between the parties involved in the concerned exchanges has lost centrality, increasingly to the advantage of arguments apparently unconcerned with justice writ large.

This dissertation attempts to partially refocus the debate on unfair terms control, exploring the contribution that the emergence of unfair terms control in employment contracts in two legal systems can make to articulating the respective positions of judicial control, regulation and justice in contract law. By reconstructing the developments preceding the adoption of rules allowing judicial control of non-negotiated employment contracts in France and Germany, the book focusses on judicial control as a response to *contractualisation* of employment relations. Such contractualisation – in itself a combination of broad trends in labour law, doctrinal developments and, increasingly, HR practices – is paralleled to the movements which, at the outset of the 20<sup>th</sup> century, gave rise to the notion of *contrat d'adhésion*. Employers have good reasons to use the contract as a tool: to customise the contents of the employment relationship, to include elements of flexibilisation and to put in place dispute-management procedures. This increases the saliency of contracts, and contract law, in employment relations. Such success of contract law as a means of managing unequal relations calls for a reconsideration of its basic tenets, and in particular of what corrective justice means between the parties concerned.

In the book's two parts, both case-law of the EU Court of Justice and salient adjudication on "unfair" terms in employment contracts are scrutinized with a view to assessing the extent to which regulatory and "justice" rationales are reflected in the way judicial control is shaped. While the EU case law (perhaps

unsurprisingly) displays a remarkable degree of regulatory ambition, both case studies show the crucial role of “contractual” or corrective justice concerns in making sense of judicial and interpretive practices. Interestingly, the case of Germany shows how the more recent legislative regulation of unfair terms control has *increased* the regulatory features of a judicial scrutiny that had been established by labour courts already decades earlier. This shift is particularly visible in the field of the consequences of unfairness – albeit with less far-reaching and less unsettling consequences than the similar rule put in place by the Court of Justice in the only apparently far apart field of consumer contracts. In both countries, furthermore, exclusive focus on *non-negotiated* or standardised terms is also a novelty brought about by legislative intervention: a very important distinction to the ends of certain doctrinal accounts and one that is crucial to the purchase of regulatory arguments, but perhaps not a very useful one in court disputes where lack of (meaningful) negotiation could easily be assumed. Rather than letting this distinction over-determine our analysis, thus, the story invites us to once again reconsider the idea that standardisation justifies exceptions from non-intervention and perhaps rather ask at what conditions principled *non-intervention* is justified. The little clog on the book’s cover reminds us of injustice lingering when the law abides by arbitrary will under the vestige of contract.



## Samenvatting

De regulering van oneerlijke bedingen is een centraal en actueel thema in het Europese contractenrecht. De manier waarop dit thema wordt benaderd en besproken heeft invloed op ons begrip van het contractenrecht – en wellicht nog breder: op ons begrip van het privaatrecht in het algemeen. In de afgelopen decennia is een belangrijke discussie ontstaan over de zogeheten Richtlijn oneerlijke bedingen (1993), die de rechterlijke toetsing van *niet-onderhandelde bedingen in consumentenovereenkomsten* in de Europese Unie heeft geharmoniseerd. Hierbij is veel aandacht besteed aan de *rechtvaardiging* van de rechterlijke toetsing van oneerlijke bedingen. De focus van dit debat is geleidelijk verschoven van de verschillende, soms ambigue argumenten in de oorspronkelijke nationale discussies naar de *regulerende* aspecten van rechterlijke toetsing. Het tegengaan van marktfalen en, controversiëler, het bevorderen van sociale rechtvaardigheid of consumentenbelangen zijn tegenwoordig standaardargumenten en -uitgangspunten voor kritiek of normatieve bijdragen geworden. De nadruk die daarbij wordt gelegd op zaakoverstijgende effecten wordt de *regulerende rationaliteit* genoemd: “rationaliteit” in die zin dat het geen antwoorden of uitkomsten voorschrijft, maar eerder bepaalt welke *vragen* relevant worden geacht. Juist de *vraag* wat contractuele rechtvaardigheid in de basis vereist tussen de betrokken partijen is buiten beeld geraakt, in toenemende mate ten gunste van argumenten die schijnbaar niets van doen hebben met rechtvaardigheid in brede zin.

In dit proefschrift wordt een aanzet gedaan voor een gedeeltelijke heroriëntatie van het debat over oneerlijke bedingen. Hierbij wordt verkend welke bijdrage de ontwikkeling van rechterlijke toetsing van oneerlijke bedingen in arbeidsovereenkomsten – zoals onderzocht in twee rechtsstelsels: Duitsland en Frankrijk – kan leveren aan het verduidelijken van de rol van rechterlijke toetsing, regulering en rechtvaardigheid in het contractenrecht. Aan de hand van een reconstructie van de ontwikkelingen die voorafgingen aan de implementatie van wetgeving die rechterlijke toetsing van niet-onderhandelde arbeidsovereenkomsten in Frankrijk en Duitsland mogelijk heeft gemaakt, schetst dit boek een beeld van rechterlijke toetsing als antwoord op de *contractualisering* van de arbeidsverhouding. Die contractualisering kan worden gezien als een combinatie van brede tendensen in het arbeidsrecht, de juridische doctrine en, in toenemende mate, hr-praktijken, die parallel loopt aan de ontwikkelingen die aan het begin van de twintigste eeuw hebben geleid tot de opkomst van het begrip ‘*contrat d’adhésion*’. Voor werkgevers zijn er goede redenen om het contract als instrument te gebruiken: om de inhoud van de arbeidsrelatie te specificeren, om elementen van flexibilisering op te nemen en om procedures voor

geschillenbeslechting in te voeren. Dit verhoogt de relevantie van contracten en het contractenrecht in arbeidsrelaties. Het geconstateerde succes van het contractenrecht als middel om ongelijke verhoudingen te beheersen vraagt om een herdefiniëring van de belangrijkste aspecten van het contractenrecht – met name wat de vraag betreft naar de betekenis van correctieve rechtvaardigheid voor de betrokken partijen.

In de twee delen van dit boek worden zowel de jurisprudentie van het Europese Hof van Justitie over de Richtlijn oneerlijke bedingen als relevante uitspraken over "oneerlijke" bedingen in arbeidsovereenkomsten op nationaal niveau geanalyseerd, om te onderzoeken in hoeverre grondgedachten op het gebied van regulering en "rechtvaardigheid" tot uiting komen in de wijze waarop rechterlijke toetsing is vormgegeven. Terwijl de jurisprudentie van het Hof van Justitie (wellicht niet verrassend) een aanzienlijke mate van reguleringsambitie laat zien, tonen beide casestudies aan dat "contractuele" of correctieve rechtvaardigheid van cruciale betekenis is voor een meer volledig begrip van rechterlijke interpretaties en uitspraken. In het geval van Duitsland laat de analyse zien hoe de meer recente wettelijke regulering van oneerlijke bedingen de regulerende kenmerken heeft vergroot van een rechterlijke toetsing die al tientallen jaren eerder door de arbeidsrechtbanken was geïntroduceerd. Deze verschuiving naar een meer "regulerende" aanpak is vooral zichtbaar ten aanzien van de gevolgen van oneerlijkheid – zij het met minder verstrekkende en ingrijpende gevolgen dan de vergelijkbare regel die het Hof van Justitie heeft ingevoerd op het gebied van consumentenovereenkomsten. Verder is in beide landen de exclusieve aandacht voor *niet-onderhandelde* of gestandaardiseerde bedingen bovendien een vernieuwing die door wetgevend optreden tot stand is gebracht. Het onderscheid tussen gestandaardiseerde en onderhandelde bedingen is zeer belangrijk vanuit het perspectief van bepaalde doctrines en mogelijk cruciaal voor de overtuigingskracht van reguleringsargumenten, maar misschien een minder onderscheidend criterium in een concrete rechtszaak, waar het ontbreken van (zinvolle) onderhandelingen relatief snel zal kunnen worden aangenomen. In plaats van te veel waarde te hechten aan dit onderscheid, nodigt deze waarneming ons uit om het idee dat standaardisatie uitzonderingen op non-interventie rechtvaardigt nog eens te heroverwegen en ons eerder af te vragen onder welke voorwaarden principiële *non-interventie* gerechtvaardigd is. Het klompje op de omslag van het boek herinnert ons aan het onrecht dat dreigt wanneer de wet vasthoudt aan de willekeur van het contract.





## Acknowledgements

A large project is over. Thanks to my considerable personal and professional luck at the University of Amsterdam, other projects are already underway. None of these would have been possible without the support of my supervisors, Aukje van Hoek and Marco Loos. As in other types of families, we did not know each other at the start. Patiently but firmly, you have nonetheless directed me towards overcoming the several obstacles I put on my own way. Marco, the trust you have come to put in me over the past years is a source of pride next to, more importantly, gratitude. Aukje, besides the key advice you had for me at several points, your generosity and dedication – whether expressed in the form of sharp reading or pizza-buying – have literally pulled me over the last few meters. It goes without saying that all that is wrong with the thesis is to be put down to me alone.

I am grateful to the members of the reading committee – Kati Cseres, Nicole Maggi-Germain, Chantal Mak, Hans-Wolfgang Micklitz, Christoph Schmid and Evert Verhulp, who deserve special mention not only for their willingness to assess the manuscript but also for their patience in accommodating a bunch of delays and their perseverance in reading through a pandemic, university closures and lockdowns.

Thanks, also, to a number of outstanding scholars who have lent a few hours of their time to discussing unfair terms with me: Judith Rochfeld, Philipp Hellwege, Rudiger Krause and Hugh Collins provided not only their scholarship but also words of wisdom and in some cases hospitality at their institutions. Jérôme Porta's reading suggestions gave me valuable insights and whole weeks of intellectual enrichment.

Martijn Hesselink opened the door of CSECL to me and over time convinced me that I was simply not thinking wild enough. Whether this was true or not, I am grateful for his criticism and his friendship. My Guardian breaks would not be the same without you – nor would my scholarship, for what that matters. Chantak Mak stewarded me through my very first teaching experience: I can now perhaps say, I had no idea what I was doing. She most likely suspected as much and never held it against me, feeding me confidence and *boterkoek* at critical times. Hereby my heartfelt thank you.

At CSECL (now ACT), I have been blessed with many amazing encounters and a number of genuine friendships. My highly accomplished *paranymphen*, former roommates and occasional movie pals Bram and Mirthe have accompanied very different stages in the making of the book with very similar unassuming warmth. Bram, Hawaii tosti's are gross to the core but quite delicious in fact, would never have known without you. Mirthe, I hope "Cass.soc." is not the one thing you will remember about our various thesis-related discussions – but I am still hugely grateful for your help and support ("*sending today?*"). The rest, we'll see. Or, thanks for all the fun, the food, the flea market trips and your resolve to bring order to my working methods – it's only my fault that your efforts are often frustrated. Your *sabich* has twice been crucial to the book, and your wits much more often to my sanity ("*It could be that everybody at the UvA hates you, but could it be the hormones instead?*"). I miss you. Alon, you are still in time to move to Brussels before fully falling for Leeds. Anna, it's a real blessing that we can still share joys and defeats in our respective academic and life paths, and great fun to have nerdy exchanges where I pretend to understand civil procedure. I'd

rather you'd still have haring with me every now and then – whether here, in Noordwijk or elsewhere – but I guess I can cope. Two more roommates have made my PhD days less lonely. I have learnt a great deal from each (from bears to sharks to furniture to Scandinavian legal theory and political philosophy) while also having a lot of fun. Josse, you made up pretty quickly for calling me “the shortest CSECL member” the first time we talked. While you never condoned my undecisive attitude to the whole PhD-finishing issue, your saintly composure upon finding out that we had to drive back three hundred kms to retrieve my passport somewhere along the Australian coast will never be forgotten. Karoline, as long as you were around I could pretend I had an idea what cool people did, wore and ate. Although I was never great at being hip by proxy, we should still see each other more often so you could give me some *bijles*. Olga, we never sat in a room together but still we went through some *good* (and less good) *times*. But we are getting better by the year, so more to come. I have shared drinks, reads, trips, frustrations and parenting questions with many others at the Centre: Joasia, Sacha, Aart, Beatrijs, Irina, Laura, Mia, Rafal (of course!), I promise that at some point there will be *some* celebration! It goes without saying that the many lovely colleagues (in particular but not only from the Private Law department) whom I am certainly forgetting are also invited. Same goes for the many students who have so much enriched my academic life in the past years – I would have loved to share with you the day I become a more respectable lecturer.

That CSECL has by now turned into ACT and so many exciting things are going on is due to collective work, courage and determination but also to the efforts of a single human, my beloved friend and daily source of inspiration – not to mention, over the past couple of years, officially appointed *co-promotor* – Marija Bartl. You know how much I love you and admire your scholarship but *I* know you will be happy to see it repeated here.

I would not have ended up at the University of Amsterdam – and probably would have quickly fallen out of any passion for legal research – without my supervisor and mentor in Pisa, Giovanni Comandé, and my first role-model in the (we can now say it) sometimes very misogynistic environment of Sant'Anna, Caterina Sganga. My first steps in Dutch academia led to a number of encounters, some bumpier than others. Thanks to Franck Hendrickx, thus, for once reminding me that *also supervisors have feelings*. I hope I am able to carry his wisdom with me in all my academic interactions nowadays.

Our life in Amsterdam has been blessed with the gift of a number of extended families: Stefania and Giovanni, how *bijzonder* that we ended up in the business of parenting pretty much at the same time and more or less in the same place. It is wonderful to see Enrico, Emma, Elena and Matteo grow next to our own kids. Marghe, look what we are all doing! Piet, thanks for bearing with all the Italian and chaos. Ale & Francy, well you know, I think; we will resume our visits to Pizzabakkers and weekly meals soon enough. Teresa, I will get to you in a sec.

Back in Italy, some of my friends were considerably quicker on finishing their dissertations but managed their objective high ground with plenty of grace. Cinzia, thanks for the fun visits here and there, *le merende* chez Maria Teresa (ciao!), the updates on labour law and the fundamental literature references. Vio, thanks for being my constant reminder that form

is substance, a crucial aesthetical but also critical tool (even though one which we must also subject to critique!). We may not always be in touch as much as we'd like to, but you are always with me. [Elia e Andrea, baciotti]

Talking of extended families above should not detract from more conventional constellations. Teresa (zia Teresa!) has been the first in her family to get a PhD – and also in ours. Luckily (for your nephews and their parents) you are also very good at ball games, videocalling gym and many other things, but I directly enjoy your conversation skills the most I must say. Carlo's parents, Lucio and Lucia, and the rest of the Veneto crowd – Alessandra, Ivana and Renzo – have been putting up with distance and worries about our meanderings with remarkable steadiness and regularly offered wonderful prosecco and culinary escapes. Next to, more recently, being a great uncle to Leo and Dario, Davide has given us a reason and excuse to travel back since short after moving away from Italy. Unbelievable how big you have got! Big hug.

Whether I was waiting for a bus under the rain, getting a piercing or wondering whether I should totally change career plans, I knew someone in Fondi had my back. Maria Nives, Raniero, Marta and Marco, if love had to be expressed in food it would have to be olive oil and artichokes travelling across Europe in a glass jar. Extra thanks, by the way, to talented Marta for designing the book's cover and her patience in complying with my obsessive suggestions re colours, lines, text orientation and spacing. Mario e Sara, here is the book we have been talking about for years – not as fun as Murakami, but it's done at last. Rossella, thanks for always insisting that we stay sane and grounded.

The book is for my parents, Ester and Massimo – somewhat ironically, since they disagree on almost everything but have always both insisted that my study and career choices should be for me and not for them. As a grown-up person and as an academic, I will never be grateful enough for the combination of empowerment and consciousness that this has endowed me with. I would, however, likely not have become the kind of person who actually *finishes* a book without my partner Carlo, who every day dares me to be a more decent, more reflexive human and my two sons, Leo and Dario, who give me endless happiness even though I can't seem to learn how to play.