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Ann-Christin Maak-Scherpe and Richard Hart

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Contents

Preface 2
Teaching Materials 3
eBook Solutions 6
Law 7
Law – General 7
Administrative Law 7
Banking Law, Financial Law and Regulation 9
Bankruptcy and Insolvency Law 10
Company, Commercial and Competition Law 10
Comparative Law 12
Constitutional Law and Fundamental Rights 14
Consumer Law 16
Contract Law 17
Courts and Judges 20
Criminal Law and Procedure 22
Environmental Law, Energy Law and Natural Resources 23
European Union Law 25
European Law 26
Family Law 28
Human Rights 33
Intellectual Property 38
International Criminal Law 39
Labour and Employment Law 41
Law and Economics 41
Law, Information and Technology 42
Legal Education and the Legal Profession 44
Legal History 45
Legal Theory 47
Litigation and Civil Procedure 48
Private International Law / Conflict of Laws 51
Property Law 54
Social Law 55
Tort Law 57
Trust and Equity 58
Business & Finance 59
Title Index 61
Author Index 62
International Distribution 63
Book Ordering Information 63
Order Form 64

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See page 55

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European Legal Principles as Applied in Hong Kong

The Honourable Chief Justice Geoffrey Ma

Mok Law Lectures, volume 1
ISBN 978-1-78068-993-7
approx. 60 pp. | paperback
2020 | € 25 | £ 30 | $ 24


The coming into effect of the Basic Law and the Hong Kong Bill of Rights Ordinance saw the constitutional implementation of the rights contained in the International Covenant on Civil and Political Rights. The more than twenty years that have passed since the exercise of the resumption of sovereignty by the People’s Republic of China over Hong Kong have seen the latter’s courts grapple with legal challenges hitherto untouched. Cases have at times involved sensitive areas since some of the cases have originated from controversial political, social and economic events.

In meeting the legal challenges, the courts in Hong Kong have had to seek guidance from different sources and much assistance has been derived from European jurisprudence. The manner in which rights have been treated in European jurisprudence has been a major influence on how legal challenges unique to Hong Kong have been conceptualised and resolved under her common law system.

International Jurisdiction: Rules or Discretion?

Dr. Pippa Rogerson

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In国际 Jurisdiction: Rules or Discretion?

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Principles of Good Governance and the Ombudsman

A comparative study on the normative functions of the institution in a modern constitutional state with a focus on Peru

Alberto Castro

ISBN 978-1-78068-780-3
xvi + 592 pp. | paperback
2019 | € 89 | $ 107 | £ 85

This book determines the extent to which, through the performance of (indirect) normative functions and the application of principles of good governance as assessment standards, the ombudsman institution can contribute to improving the legal quality of the government while enhancing the legitimacy of the administration and the democratic system as a whole.
Traditionally, legal scholarship on judicial review is predominantly normative, concentrating on how courts should decide cases and to what extent they should show deference towards the legislative branch. Political scientists, on the other hand, seem more interested in what motivates judges and which factors influence their decisions. In contrast to the extensive body of literature on judicial behaviour in countries with a common law tradition (especially on the US Supreme Court), there is little systematic, empirical knowledge relating to European constitutional courts.

Focusing on the Constitutional Court of Belgium, the approach of this book is to combine normative ideas on how the Court should act with an empirical case law analysis. It explores the extent to which the Court performs as a deliberative institution, while operating within a consensual political system.

The answers to these questions contribute to a fundamental discussion about the appropriate role for judicial institutions in a democratic society. The book shows that the Court’s case law is (in part) shaped by strategic considerations. In salient cases, the Court prudently adapts various aspects of its decision in order to stimulate acceptance and compliance. The analyses reflect the fact that the Court is willing to engage in dialogue and that a consensus must be found amid a pluralist group of judges in each case. In addition, by continually taking into account the anticipated behaviour of its audience, the Court protects its institutional legitimacy for future cases.

This book considers the case law of the European Court of Justice which makes up the framework for the requirement to interpret national law so far as possible in conformity with EU law directives. It analyses the application of this obligation in three Member States. The key question underlying this examination is to what extent the established theories of supremacy of EU law, national constitutionalism and constitutional pluralism adequately explain the relationship between EU and national law under the duty of consistent interpretation.

Both the duty of consistent interpretation and national interpretative rules are complex ‘creatures’; it can be difficult to disentangle how they interact. The book therefore includes an outline of the approach to interpretation in a non-EU law context for the three Member States. The author develops a typology for understanding the different kinds of interaction, mainly by asking under which circumstances it can be said that there exists a ‘conflict of interpretative rules.’ The book also discusses several judgments, highlighting the mutual responsiveness of the duty of consistent interpretation and national interpretative rules, as well as the reconciliatory attitude of national courts. Since the fit between consistent interpretation and theories on the relationship between EU and national law is examined, this book also investigates the explanatory value of those theories beyond the context in which they were primarily developed.
National and International Anti-Money Laundering Law
Rethinking the Architecture of Criminal Justice, Regulation and Data Protection
Benjamin Vogel (ed.)
ISBN 978-1-78068-954-8
approx. 900 pp. | paperback
2020 | € 69 | $ 83 | £ 66

While Anti-Money Laundering instruments are ever increasing in scope and complexity, policymakers have often lost sight of the objectives pursued. As a consequence, legislation is, in many cases, shaped by unrealistic political expectations and inconsistent design. Against this backdrop, this book explains key deficiencies of existing law and develops policy proposals to enhance both effectiveness and respect for fundamental rights. To this end, it thoroughly examines the interplay between criminal justice, regulatory law and information sharing rules in Germany, Italy, Spain, Switzerland and the United Kingdom, and contrasts these findings with the frameworks of the Financial Action Task Force and of the European Union.

The results emphasise the need to approach Anti-Money Laundering as a complex architecture that consists of numerous diverse but highly interdependent areas of law. Reform debates must therefore overcome a fragmented vision, in particular as regards the function of Financial Intelligence Units and financial transparency. Only then does one learn from past mistakes and avoid ill-conceived remedies that ultimately fail to adapt supranational standards to the institutional and constitutional reality of countries’ domestic legal order.

Islamic Finance
Between Religious Norms and Legal Practice
Wim Decock and Vincent Sagaert (eds.)
ISBN 978-1-78068-619-6
viii + 137 pp. | paperback
2019 | € 45 | $ 54 | £ 43

This book explores the tensions between the religious and legal principles of Islamic finance and Islamic banking in practice. It does not limit itself to a legal discussion and presents a truly interdisciplinary and intercultural dialogue between lawyers, theologians, and economists with roots in academia and practice. There is considerable divergence in their evaluation of the status quo and future of Islamic finance.

Contributions cover aspects of Islamic finance in theory and practice. It provides insights into the interplay of religion, ethics and finance covering both the Islamic and Christian traditions that sets the scene for Islamic finance in practice: economic technicalities of Islamic banking services, its regulatory aspects, and the complex legal arrangements of Islamic finance in non-Muslim-majority countries.

Islamic Finance is a truly international collaboration of outstanding scholars and practitioners in their field that reveals the complexities involved in applying religious principles and legal theory to the daily practice of business and finance.

With contributions by Martin Bünning and Aryanaz Rezaian, Mahmoud A. El-Gamal, Syed Imad-ud-Dis Asad, Amel Makhlouf, Mathias Rohe, Hans Visser and Rodney Wilson. The editors of this volume are Wim Decock and Vincent Sagaert.
This textbook deals with the foundations and key issues of corporate insolvency law.

*Corporate Insolvency Law* approaches the topic from a comparative perspective, in that it does not concentrate on one insolvency law in particular but rather introduces the relevant rules from various jurisdictions, primarily England (and Wales), France, Germany and those of the USA. It is case focused and designed for learning and teaching corporate insolvency law.

**Reinhard Bork** is Professor of Law at the University of Hamburg, Germany, where he holds the chair for Civil Procedural Law. He has held the position of Dean of the Law Faculty, was Robert S. Campbell Visiting Fellow at Magdalen College Oxford twice, and is currently also Professor for International Insolvency Law at Radboud University Nijmegen, the Netherlands. He has previously served as a judge at the Upper State Court (Court of Appeal) in Hamburg, the Commercial Law Division. He has considerable experience as an arbitrator in national and international cases since.

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This volume contains the papers presented during a workshop at Ghent University’s Financial Law Institute. The aim of the workshop was to confront the new Belgian framework on creditor protection in closed companies with foreign experiences and insights from recent legal and empirical research. The book deals with questions of creditor protection throughout the lifespan of companies: from the time of their formation, over the different kinds of distributions, to their winding-up. Some contributions focus on more topical issues of creditor protection like the subordination of shareholder loans or the foreclosure of security interests.

The book contributes to the continuing debate on the optimal legal strategy regarding creditor protection. Furthermore, it provides valuable insights on the background and foundations of the remarkable approach towards creditor protection in closed companies in the new 2019 Belgian Companies Act.

**With contributions by** Diederik Bruloot and Evariest Callens, Hans De Wulf, Miguel Gimeno Ribes, Frederic Helsen, Simon Landuyt, Christoph Van der Elst and Jasper Van Eetvelde.
Enforcing Consumer and Capital Market Law: The Diesel Emissions Scandal
Thomas M.J. Möllers and Beate Gsell (eds.)

ISBN 978-1-78068-964-7
approx. 429 pp. | hardback
2020 | € 124 | $ 149 | £ 118

“This is an international and intradisciplinary work. On the example of one topical and global collective damage event with far reaching consequences for both consumers and investors this work critically analyses the various approaches of public and private law enforcement and their effectiveness across several jurisdictions.

Enforcing Consumer and Capital Market Law: The Diesel Emissions Scandal is a comparative work focusing on several jurisdictions, namely those of the United States of America, Brazil, China, Australia, the United Kingdom, the Netherlands, Denmark, Germany, Austria, France, Italy, Portugal and Lithuania.

Based on decided and pending cases, the book demonstrates to what extent public authorities, but also private claimants, can take effective steps against the violation of their rights in their respective jurisdictions. A particular focus is given to collective redress, that is representative actions and model case proceedings. Comments from renowned practitioners sharing their experiences are included throughout the book.

Separate concluding comparative chapters have two different aims: A comparative analysis of the legal solutions with a supranational European Union level focus provides invaluable insights into best practices and effectiveness. In addition, an intradisciplinary comparison assesses and evaluates the effectiveness of consumer law vs capital market law mechanisms. Furthermore, mechanisms of competition law and company law are taken into account.

Prof. Dr. Beate Gsell holds the Chair for Civil Law, Civil Procedure, European Private and Procedural Law at the Ludwig-Maximilians-University of Munich (LMU), Germany.

Prof. Dr. Thomas M.J. Möllers holds the Chair of Civil Law, Commercial Law, European Law, International Private Law and Comparative Law, Jean-Monnet-Chair ad personam at the University of Augsburg, Germany.

Comparative Law

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Rethinking the Architecture of Criminal Justice, Regulation and Data Protection
B. Vogel (ed.)

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See page 59

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M. Brenncke
Intersentia Studies on Courts and Judges
xxxiv + 438 pp. | hardback
2018 | € 125 | $ 150 | £ 119
See page 49
Courts regularly rely on process-based fundamental rights review. This means that they examine the diligence, fairness, and quality of legislative, administrative, and judicial procedures to determine whether fundamental rights have been violated. However, despite the frequent application of such review in practice, important questions about the meaning and value of procedural reasoning arise. Do courts provide sufficient protection of substantive rights when taking a procedural approach? Can they safeguard values of deliberative democracy and the rule of law through procedural reasoning? And can they rely on process-based review to avoid morally sensitive issues and cases concerning hard policy choices?

This book engages with such questions with the aim of uncovering the potential and limitations of procedural reasoning in fundamental rights cases. To this end, it first discusses a number of concrete examples of application of this review by various courts. It then develops a context-independent definition of process-based fundamental rights review, which acknowledges the various uses of this type of review.

On this basis, the book finally discusses the wide-ranging theoretical debates concerning procedural reasoning and identifies underlying explanations for the different views on the topic.

The resulting in-depth and nuanced understanding of process-based fundamental rights review will support courts in developing well-balanced procedural approaches, and will assist scholars in studying procedural reasoning more systematically.

DR LEONIE HUIJBERS is a policy advisor at the Netherlands Institute for Human Rights, which focuses on human rights issues related to poverty, digitalisation, freedom of expression, employment discrimination, and the rights of LGBT, migrants, and persons with disabilities.
The fifth edition of this handbook provides a user-friendly introduction to comparative constitutional law. For each area of constitutional law, a general introduction and a comparative overview is provided, which is then followed by more detailed country chapters on that specific area.

In this fifth edition, the author has expanded several chapters to provide for even more detail on national legal systems and constitutional comparison. In addition, he has updated the discussion wherever necessary. The book has also been expanded with a larger number of (sub)headings to allow for a better overview. Furthermore, this book most notably includes many constitutional developments in the constitutional systems within our scope, including the ‘Brexit’ and the new compositions of the national and the European Parliament.

In the previous edition the EU has more extensively been woven into this book, as a constitutional system per se and as an international organization which heavily impacts upon domestic constitutional law. This new edition has been expanded with chapters on human rights as they are protected in the constitutional legal systems, as well as in the multi-layered European legal order.

This book has proven its success as a helpful guide for students who are for the first time exploring comparative constitutional law, and a solid foundation for more advanced graduate-level courses.

Constitutions Compared

5th edition
An Introduction to Comparative Constitutional Law
Aalt Willem Heringa

xvi + 326 pp. | paperback
2019 | € 70 | $ 84 | £ 67

[a] very valuable resource for the further development of the important field of comparative constitutional law.

– Prof. Dr. Peter Hilpold, Europa Ethnica (2019)
In recent years, policy makers at various levels have discovered the concept of a circular economy and as a result, are increasingly proposing strategies and legal instruments to support the transition from a linear economy towards a more circular economy.

This book explores the concept of a circular economy from both a legal and an interdisciplinary perspective. It provides an in-depth analysis of the initiatives taken at EU level and in several EU Member States (including Belgium, France, Germany, the Netherlands, Spain, Slovenia and the Scandinavian countries), both with regard to movables and immovables and in the various stages of the value chain.

Consumer Protection in a Circular Economy provides the reader with an examination of the most pressing issues in consumer protection today.

Bert Keirsbilck is an Associate Professor at the Institute for Consumer, Competition and Market (CCM), Faculty of Law, KU Leuven.

Evelyne Terryn is a Professor at the Institute for Consumer, Competition and Market (CCM), Faculty of Law, KU Leuven.

With contributions by Hugo Maria Schally, Renatas Mazeika, Karel Van Acker, Johan Eyckmans, Anaïs Michel, Bert Keirsbilck, Evelyne Terryn, Fryderyk Zoll, Vanessa Mak and Enna Lujinovic, Annick De Boeck, Eléonore Maître-Ekern and Carl Dalhammar, Petra Weingerl and Janja Hojnik, Benjamin Verheyen, Klaus Tonner, Francisco de Elizalde.
This book explores the theoretical basis of precontractual liability for the unilateral breaking-off of negotiations from a comparative perspective. It argues that, in the selected civil law jurisdictions (Germany, France and Chile), the true basis of this liability is the notion of ‘reliance’ and it distinguishes two dimensions of reliance: ‘trust-based’ and ‘expectation-based’. For the three jurisdictions it can be observed that trust-based reliance merges with the general principle of good faith and that the expectation dimension emanates from the trust-dimension. Therefore, this book argues that this innovative theoretical approach to the foundations of precontractual liability could have important practical consequences in jurisdictions that do not embrace a general principle of good faith, such as English law. If the analysis is shifted from good faith to the notion of reliance, English law could develop a less fragmented approach and encompass cases that are currently devoid of protection. The final chapter explores how legal changes could be implemented without establishing a general principle of precontractual liability.

In an evolving world where international trade is ever-growing, precontractual liability, particularly for breaking off negotiations, is a topic of constant development by legal scholars and the judiciary and of increasing importance for practitioners, judges and academics, with significant consequences for negotiating contracts both at a national and at a transnational level.

With the increasing importance of the concept of remedies in European private law, this book focuses on remedies as a distinctive and novel field of European legal research. It considers the common law tradition (England and Wales), as well as the civil law viewpoint (Germany), making the case for a European law of remedies.

It is argued that ‘remedies’ are an enforcement tool influencing the scope of substantive rights. In doing so, the book analyses different mechanisms of enforcement, including the debate on private versus public enforcement as well as the perspective of criminal law. The enforcement of rights is understood as an intradisciplinary task. Remedial law is, however, distinct from procedural law, as well as from substantive law in a narrow sense.

Subsequent to defining the scope of a law of remedies, this book analyses several underlying principles and common themes. For example, the proportionality test is presented as a fundamental principle in European remedial law. The value gained by identifying common ground is e.g. illustrated with respect to damages in European Private Law. Especially in IP law, in turn, the CJEU rulings and secondary European legislation confirm the importance of proportionate remedies. Moreover, within the law of remedies the function of each remedy can be analysed, and respective interests can be balanced.
This book is a unique study of the law of contract in a range of South Pacific Island countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Tokelau, Tonga, Tuvalu, Samoa, Solomon Islands and Vanuatu, to name a few. Whilst this law has yet to establish its own regional identity, it differs significantly from the law of contract which operates in England and Wales. Incorporating an up to date survey of local jurisprudence, this book discusses the common law principles with reference to both regional decisions and case law from England and Wales. Further, it explains how the law of contract differs from country to country within the South Pacific and highlights the areas where regional courts have chosen to follow national legal developments in other countries, such as Australia and New Zealand. Relevant legislation in operation is also discussed, including local enactments and statutes that have been introduced from overseas. In addition, a separate chapter is specifically dedicated to customary laws, exploring the question of whether there is a customary law of contract. Subsequent chapters go on to explore the relationship between customary laws and particular State contract laws.

“This is not just a student textbook. It is an essential, invaluable and accessible tool for every lawyer in the South Pacific or any lawyer anywhere dealing with the South Pacific.”

– From the Foreword by Justice David Cannings, CBE Judge of the National Court and the Supreme Court of Papua New Guinea

With the growth of cross-border business, the rather important but complex and controversial topic of interpretation and gap filling in international commercial contracts receives more and more attention.

International legal instruments such as CISG, UNIDROIT Principles, PECL and DCFR provide rules in order to interpret international commercial contracts in a uniform way. However, while these instruments may bring together already existing national concepts, they must of course be understood beyond the domestic concepts and approaches as such.

This book is an autonomous comparison across the above-mentioned international legal instruments, with a focus on the rules on interpretation and gap filling that provides the necessary theoretical background and case law to understand the rules in practice. Interpretation and Gap Filling in International Commercial Contracts examines the uniform and harmonised set of rules in their own right; without comparison to national laws, but in their own unique setting of international commercial contracts. It is a practical user guide for both scholars and practitioners.

Dr Ayse Nihan Karadayi Yalim is a postdoctoral researcher on international contract law at the University of Antwerp, Belgium.
This book is a unique and extensive comparative study of commercial contract interpretation across 14 selected jurisdictions, namely Croatia, England and Wales, Finland, France, Germany, Greece, Italy, The Netherlands, Poland, Portugal, Scotland, South Africa, Spain and Sweden. Using a dynamic comparative case method, the focus is centered on the discussion of key legal problems, further examined in a detailed and comprehensive comparative analysis.

In this way, the book makes important advancements in the general understanding of contract interpretation in European private law in three respects. First, it enriches the conventional conceptual framework for the methods of contract interpretation by distinguishing between interpretation aims and means. Second, it challenges the presumptive division of common law and civil law jurisdictions, for example, the assumption that civil systems follow a subjective approach and common law systems an objective approach to interpretation of contract. Third, the book provides a more subtle analysis of the role of standards of 'good faith' in contract interpretation.

A common core of contract interpretation in European private law that is inferred from the national reports is that every legal system strives to reach a compromise between staying true to the intentions of the parties, assessing what a reasonable person would understand from the contract drafting, and preventing outcomes that are unfair or unjust. Each court draws on the material available to it in order to reach this compromise.

Conversely, the differences between the jurisdictions pertain to what constitutes a common intention between the contracting parties and reasonableness, and what the appropriate methods are by which these could best be ascertained. Here, the jurisdictions reveal a variety of conceptual, doctrinal and pragmatic similarities and distinctions.

Interpretation of Commercial Contracts in European Private Law presents valuable insights and thoughtful analysis that will be highly relevant to academics, practitioners and students of European private law and contract law.
More and more people are turning to human rights courts to seek protection against prejudice, disadvantage or exclusion on account of their cultural and economic particularities. Human rights courts are thus increasingly faced with the difficult task of deciding these cases, which raise a number of complex and contested legal questions. To what extent can courts accommodate cultural diversity, protect all kinds of groups or interfere in socio-economic policy?

This book argues that one of the problems encountered in dealing with such cases is the courts’ tendency to assess them from a ‘compartmentalised’ or fragmentary perspective. This line of reasoning isolates or places into ‘boxes’ the various interrelated components of the right holder’s claim and the norms concerning the case to their detriment. This book critiques this reductionist approach that tends to leave the roots of the alleged violations intact. To counterbalance this tendency, an innovative, integrated and person-centered approach to adjudicating claims of cultural difference and economic disadvantage is put forward.

Drawing on the concepts of intersectionality, indivisibility and normative interdependence, the book presents specific notions and methods for approaching the appreciation of rights holders, harms and norms in a holistic manner. A wide selection of case law from both the European and the Inter-American courts of human rights supports the normative framework developed in this book. The sample mostly includes cases brought by Muslims, Roma, Travelers, indigenous peoples, afro-descendants and people living in poverty.

This book combines legal theory with practical insights in analysing both cultural and economic issues, which are rarely addressed together in human rights legal scholarship. It also offers a context-sensitive and relational view of human rights law that puts rights holders at the heart of the legal analysis, taking heed of the social structures within which legal frameworks operate. The book makes for compelling reading for students, academics and practitioners working in the fields of human rights law, jurisprudence, constitutional law, legal theory and feminist and cultural studies.

**Valeska David** holds an LLM from Utrecht University and a PhD from Ghent University.
Courts all over the world sit in panels of several judges, yet the processes by which these judges produce the court’s decision differ markedly. Judges from some of the world’s most notable judicial bodies, in both the civilian and the common law tradition and from supra- /international courts, share their experiences and reflect on the challenges to which their collective endeavour gives rise. They address matters such as the question of panel constitution, the operation of rapporteur systems, pre- and post-hearing conferences, the hearing procedure itself, the nature of the interaction between the judicial panel and parties’ advocates, the extent to which a unitary judgment of the court or at least a single majority judgment is required or deemed desirable, and how it is ultimately arrived at through different voting mechanisms. They allow the reader a unique inside view into the functioning of modern judicial bodies.

The judges’ chapters are supplemented by a series of comparative analyses and reflections on the lessons to be learnt from them. Collective Judging in Comparative Perspective thus also provides an ideal starting point for thinking about future court design.

Birke Häcker is Professor of Comparative Law, University of Oxford, and Fellow of Brasenose College.

Wolfgang Ernst is Regius Professor of Civil Law, University of Oxford, and Fellow of All Souls College.

This book provides unique insights into modern collective judicial decision-making.
The debate surrounding police and judicial cooperation in the European Union can be criticised for focussing too much on certain forms of cooperation or on specific problems. As a result, a thorough overview of what has been achieved in this area since the Maastricht Treaty’s entry into force in November 1993 is lacking. In contrast to the disjointed and mostly secret cooperation between police and judicial services in Europe prior to 1993, the current regime has established a coherent and transparent system within the EU that can only be described as revolutionary.

This book discusses that peaceful revolution in light of the action programmes (the Brussels Programme, the Tampere Programme, the Hague Programme and the Stockholm Programme) which were drafted in concurrence with all major changes to the constitutional relations within the European Union: the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty, the Rome Treaty and the Lisbon Treaty. This programmatic approach makes it possible to present in a clear manner the imposing array of police and judicial agencies, facilities and networks (Europol, Schengen Information System, Eurojust, European Arrest Warrant, etc.) created through democratic processes with the aim of ensuring the security of the citizens of the European Union. In particular, the problems concerning the control of internal and external borders and with respect to the containment of terrorism demonstrate that this system urgently needs to be reinforced.

It is ironic that the Brexit negotiations demonstrate the importance of the current system of police and judicial cooperation in the European Union: the United Kingdom would like to keep the great benefits of a number of its crucial components.

Cyrille Fijnaut is a former Professor of Criminology and Criminal Law at Erasmus University Rotterdam, KU Leuven and Tilburg University.

A Peaceful Revolution
The Development of Police and Judicial Cooperation in the European Union
Cyrille Fijnaut

ISBN 978-1-78068-697-4
xxvi + 824 pp. | paperback
2019 | € 95 | $ 114 | £ 90

This book is not written solely for specialists, but is intended for anyone with an interest in the development of police and judicial cooperation in the Union.
The Criminal Justice System of the Netherlands
Organization, substantive criminal law, criminal procedure and sanctions
Piet Hein van Kempen, Maartje Krabbe and Sven Brinkhoff (eds.)
xiv + 178 pp. | paperback
2019 | € 49 | $ 59 | £ 47

The Criminal Justice System of the Netherlands offers an introduction to our fascinating legal system from a criminal law angle.

The book consists of four parts. Part I covers general matters, such as the organization of the Dutch criminal justice system and the latest statistics on crime and punishment. Part II presents the basics of Dutch substantive criminal law and Part III discusses our criminal procedure. Lastly, Part IV focusses on the final stage of the criminal process: sanctions and their enforcement.

Throughout the book, authors highlight aspects of the criminal justice system of the Netherlands that would be of specific interest to foreigners. These peculiarities include, for example, the many powers of the Dutch public prosecutor, the Dutch position on euthanasia and our (in)famous drug policy. The book contains several references to case law, websites and more detailed texts (in English where possible) in order to support readers who desire a more thorough understanding of a specific topic.

The Criminal Justice System of the Netherlands is recommended to students taking an introductory course on Dutch criminal law or on comparative criminal law. It is, however, also an excellent starting point for foreign researchers who wish to explore the Dutch criminal law system.

The European Energy Law Reports are an initiative taken by the organisers of the European Energy Law Seminar which has been organised on an annual basis since 1989 at Noordwijk aan Zee in the Netherlands. The aim of this seminar is to present an overview of the most important legal developments in the field of International, EU and national energy and climate law. Whereas the first seminars concentrated on the developments at EC level, which were the results of the establishment of an Internal Energy Market, the focus has now gradually switched to the developments at the national level following the implementation of the EU Directives with regard to the internal electricity and gas markets. This approach can also be found in these reports.

This volume includes chapters on ‘Newcomers in the Electricity Market: Aggregators and Storage,’ ‘Hydropower Concessions in the EU: A Need for Liberalisation or Privatisation?’, ‘Investments and des-Investments in the Energy Sector’, ‘Offshore Decommissioning in the North Sea’, ‘CCS as a Climate Tool: North Sea Practice’ and ‘From EU Climate Goals to National Climate Laws’.

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Environmental Law, Energy Law and Natural Resources

Non-Regression in International Environmental Law
Markus Vordermayer-Riemer
approx. 667 pp. | hardback
2020 | € 139 | $ 167 | £ 132

The book analyses the emerging concept of ‘non-regression’ as a novel legal principle of international environmental law. In order to do so, it traces the development of non-regression in the framework of international human rights law and provides an examination of the respective jurisprudence under universal and regional human rights instruments. These are then compared to closely-related normative concepts in the framework of international environmental law, including the non-regression concepts of the Paris Climate Change Agreement and biodiversity-related agreements such as the Ramsar Convention on Wetlands and the Bonn Convention on Migratory Species. The book advocates a novel usage of comparative law methods in order to allow for fruitful interactions between human rights and international environmental law.

Non-regression in International Environmental Law is an important contribution to the development of international environmental law that offers a fresh perspective on the relationship between human rights and international environmental law.

Dr Markus Vordermayer-Riemer is a law clerk at the Higher Regional Court of Munich, Germany. He was previously a research assistant at the Institute of International Law of Ludwig-Maximilian University, Munich and was educated in both civil law and common law jurisdictions.

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Property Law Series, volume 10
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approx. 300 pp. | hardback
2020 | € 90 | $ 108 | £ 86

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This book provides an introduction into the European Free Trade Association (EFTA) as an international organization and, inter alia, as a platform for its member states’ relations with the EU and for jointly negotiated Free Trade Agreements. EFTA is an example of how countries that do not want to be members of the EU can still have close links with it.

EFTA is a loose intragovernmental association of some economically highly specialised, small and wealthy Western European small states which have, until now, decided not to join the EU. Essentially it is the platform for Iceland, Liechtenstein, Norway and Switzerland to coordinate their free trade policies as far as possible. Iceland, Liechtenstein and Norway also use EFTA, in particular its Secretariat, to manage their membership of the European Economic Area (EEA) and to adopt relevant legislation into the Agreement. Particularly in the context of Brexit, there are elements of the relations between the four EFTA States and the EU which are not based on either the EEA Agreement or the EU-Swiss Agreements. Until recently, EFTA was considered an outdated model. However, since Brexit interest in EFTA has increased. Where the subject was covered in the press and in relevant statements by politicians, little distinction was made between ‘EFTA’ and the ‘EEA’. This book is not about Brexit; rather it corrects certain misconceptions about EFTA and provides a clear overview on what EFTA is.
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Family Law

A book series dedicated to the harmonisation and unification of family and succession law in Europe. The series includes comparative legal studies and materials as well as studies on the effects of international and European law making within the national legal systems in Europe. The books are published in English, French or German under the auspices of the Organising Committee of the Commission on European Family Law (CEFL).

The Principles of European Family Law drafted by the CEFL are aimed at contributing to the harmonisation of family law in Europe. The first sets of Principles cover Divorce and Maintenance Between Former Spouses, Parental Responsibilities and Property Relations between Spouses respectively. This book focuses on Principles Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions. The CEFL has developed a comprehensive and original set of rules which may be a source of inspiration for legislating the rights and duties of couples who have not formalised their relationship. In their provisions on specific issues, the Principles opt for workable solutions which aim to avoid unnecessary hardship and disputes. The Principles should be used as a frame of reference by policy makers and legislators.

“... the European Family Law Series [plays] an important role in informing lawyers across Europe and beyond about developments in other jurisdictions, and in continually assessing the potential for harmonisation in the field.”

– Brian Sloan, Rabels Zeitschrift (2010)

Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions
K. Boele-Woelki, F. Ferrand, C. González-Beïfuss, M. Jänterå-Jareborg, N. Lowe, D. Martiny and V. Todorova (eds.)

European Family Law, volume 46
xii + 282 pp. | paperback
2019 | € 70 | $ 84 | £ 67

The ageing population poses a huge challenge to law and society with important structural and institutional implications. This book portrays elder law as an emerging research area and brings together authors from different disciplines (sociology, history and law) and from different legal jurisdictions (Belgium, England, Germany, the Netherlands, and Spain).

Topics discussed inter alia include: the recognition of informal care in private law and in inheritance law, the question of whether special consumer protection is needed for the elderly, the old institution of intergenerational support duty between children and their parents is considered in a new light, and public law offering options to support informal care by means of leaves for employees. In doing so, this book reflects on the allocation of responsibilities between different actors and answers questions at an institutional level: what is the role of the state, the family and the individual in taking care of elderly?

This book will appeal to academic scholars and postgraduate students of law and social sciences.

Elisabeth Alofs is Professor of Family (Property) Law and Director of the Master of Laws in Notarial Studies at the Free University of Brussels.

Wendy Schrama is Professor of Family Law and Comparative Law and Director of the Utrecht Centre for European Research into Family Law (UCERF) at Utrecht University.

Elderly Care and Upwards Solidarity
Historical, Sociological and Legal Perspectives
Elisabeth Alofs and Wendy Schrama (eds.)

European Family Law, volume 48
approx. 202 pp. | paperback
2020 | € 74 | $ 89 | £ 70

… the European Family Law Series [plays] an important role in informing lawyers across Europe and beyond about developments in other jurisdictions, and in continually assessing the potential for harmonisation in the field.

– Brian Sloan, Rabels Zeitschrift (2010)
This book focuses on the development of marriage law in Ireland from 1937 to the present day, examining the relevant historical legal background to changes in the law in the 20th and early 21st centuries. It draws on legal sources and historical and empirical evidence about the reality of family life in Ireland, to raise broader questions about the appropriate role of law in establishing, preserving and developing inclusive social understandings of marriage. The impact of accurate empirical data about family life, external international influence and sustained activism as drivers in achieving meaningful social change is also evaluated.

This original viewpoint highlights the initial ideological importance of marriage regulation in Ireland and its connection to national identity in a Catholic country.

Historically, asymmetric social rules concerning marriage allowed those in power to favour particular religious groups; first the Protestant elite and then the Roman Catholic majority.

The history and development of Irish marriage law, since the founding of the Irish state, has received little critical academic attention and this work makes a significant contribution to the fields of European family law and legal history. The book is timely and resonates not only with recent critical work about the development of Irish family law but also with broader debates about marriage and the role of state regulation that are currently taking place in numerous jurisdictions around the world.

This book focuses on the concept of party autonomy in cross-border family matters and succession in EU private international law. It analyses the choice of court and choice of law provisions that has been developed within this framework over the past two decades. These rules are evaluated and compared in view of the underlying values and objectives in the EU context. Does the manifestation of these provisions meet the EU’s objectives in adopting legislative action? If not, what factors prevent them from doing so? Are there any gaps that need to be addressed and how might these issues be tackled?

Party Autonomy in EU Private International Law
Jacqueline Gray
European Family Law
ISBN 978-1-78068-974-6
approx. 360 pp. | paperback
2020 | € 99 | $ 119 | £ 94

Dr Jacqueline Gray obtained her PhD from Utrecht University in 2019. As a member of the Utrecht Centre for European Research into Family Law (UCERF), she also participated in the European Commission-funded project ‘Cross-Border Proceedings in Family Law Matters before National Courts and CJEU’. Prior to this, she worked as a trainee at the European Parliament within the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and studied at Leiden University and the University of Glasgow.
There can be no doubt that both substantive family and succession law engage in significant interaction with private international law, and, in particular, the European Union instruments in the field. While it is to be expected that substantive law heavily influences private international law instruments, it is increasingly evident that this influence can also be exerted in the reverse direction. Given that the European Union has no legislative competence in the fields of family and succession law beyond cross-border issues, this influence is indirect and, as a consequence of this indirect nature, difficult to trace.

This book brings together a range of views on the reciprocal influences of substantive and private international law in the fields of family and succession law.

It outlines some key elements of this interplay in selected jurisdictions and provides a basis for discussion and future work on the reciprocal influences of domestic and European law. It is essential that the choices for and within certain European instruments are made consciously and knowingly. This book therefore aims to raise awareness that these reciprocal influences exist, to stimulate academic debate and to facilitate a more open debate between European Institutions and national stakeholders.

The International Society of Family Law is an independent, international, and non-political scholarly association dedicated to the study, research and discussion of family law and related disciplines. The Society’s membership currently includes professors, lecturers, scholars, teachers, and researchers from more than 70 different countries, offering a unique opportunity for networking within a truly international family law community.

The International Survey of Family Law is the annual review of the International Society of Family Law. It brings together reliable and clearly structured insights into the latest and most notable developments in family law from all around the globe. Chapters are prepared by an international team of selected experts in the field, usually covering two or more jurisdictions in each edition.

Margaret Brinig is Professor of Law Emerita at the University of Notre Dame. She is an elected member of the American Law Institute and part of the Executive Council of the International Society of Family Law.

Topical, terse and timely, this absorbing and authoritative international survey should be considered essential reading for all family lawyers.

Millions of children are on the move worldwide. Children are fleeing conflicts and wars. They move with or without their parents to attain a better future. Children on the move is not a new phenomenon, but its scale is without precedent. UN reports suggest that there are almost five million children who have migrated or who have been forcibly displaced. It is also reported that children form half the global refugee population and that many flee from violence, conflict and insecurity. Children who are migrants or refugees often find themselves in a particular vulnerable position, despite rather strong entitlements to human rights protection, as laid down in international and regional legal instruments including the United Nations Convention on the Rights of the Child, adopted 30 years ago.

In order to provide a clearer scope and insights into the nature of children’s fundamental rights and their best interests, this book examines solutions provided by both EU and international law to the questions raised by the increasing incidence of transnational families as regards the protection of minors. It covers both substantive and conflict-of-laws rules. Differences in the substantive family laws of Member States still prevent an effective protection of the child or its family unit. This includes cases of migration, asylum, forced marriage, kafalah, but also rainbow families. Further, the role of human rights (mutual recognition of status and surrogacy agreements, adoption) and procedural rights (child abduction, Brussels II bis recast) in cross-border cases must be considered carefully.

Families in Europe are increasingly shaped by the mobility of persons and multicultural backgrounds. This book focuses on the protection of children in cross-border situations. What are the fundamental rights of children in transnational families, what is in their ‘best interest,’ and how can their rights be safeguarded? There is much controversy on these rights and the accompanying uncertainty has resulted in considerable practical difficulties for those trying to implement them.

This book presents a collection of scientific papers presented at the conference ‘Safeguarding Children’s Rights in Immigration Law’, organised by the Institute of Immigration Law and the Department of Child Law of Leiden Law School, at Leiden University in November 2018. It reflects the growing concern for children and children’s rights in immigration in academia and practice. It also shows the diversity of issues related to immigration and children, including family reunification, detention, participation, human trafficking and the rights of siblings in the context of migration, as well as the significance of regional legal systems and infrastructures for the protection of children on the move.
This book provides a critical analysis of the different ways in which the law can recognise and protect relationships between adults and children in postmodern societies characterised by increasingly diverse family configurations. The book focuses on six fundamental questions:

- How does the law deal with the changes occurring in what is still referred to as the 'traditional' family, such as anonymous childbirth, paternity disputes, shared custody?
- How does the law recognise and protect families conceived with help of assisted reproduction techniques?
- How does the law recognise and protect families bound by de facto social or emotional ties, particularly in context of step-parents and step-children or foster families?
- Which relationships between adults and children should be protected, which legal tools should be used?
- Which common analytical framework could be used to understand - and face - the legal challenges raised by the transformations of family relationships?

These questions are addressed in-depth by an international team of distinguished family law experts of nine different jurisdictions around the world. The legal perspective of the national reports is complemented by interdisciplinary perspectives from experts in history, anthropology, psychology and philosophy.

Jehanne Sosson is a family law expert. She is a professor at the Université catholique de Louvain, a lecturer at the Université Saint-Louis Bruxelles and the Université Paris II Panthéon-Assas and a lawyer at the Brussels Bar.

Geoffrey Williams is a professor at the Université catholique de Louvain. His research focuses on interactions between human rights law and family law and privatisation of family law in an international, comparative and interdisciplinary perspective.

Gwendoline Motte is a teaching and research assistant at the Université catholique de Louvain. She specialises in family law with a special interest in European and comparative family law. She is also an independent family mediator.
The United Nations Convention on the Rights of the Child (CRC) requires States Parties to take all appropriate measures to implement the rights in the Convention. As we celebrate the 30th anniversary of the Convention’s adoption, focus has shifted onto the measures being taken at national level to give effect to children’s rights with specific reference to legal incorporation both direct and indirect. The way in which the CRC is given legal effect is highly contingent upon the constitutional and legal systems of individual countries and can best be understood by those writing from the specific national context.

So this book combines individual contributions that address the experience of legal incorporation in selected countries by their national experts, with comparative analysis of the international landscape from the world’s leading authorities on legal implementation of the CRC. The jurisdictions covered in this book include Australia, Scotland, Norway, Ireland, Sweden, Iceland, Wales, Israel, New Zealand, South Africa, USA, Mexico and China.

Professor Ursula Kilkelly is Professor of Law at the School of Law, University College Cork, Ireland, with particular expertise in the legal implementation of children’s rights.

Professor Laura Lundy is Professor of Children’s Rights and Co-Director of the Centre for Children’s Rights at Queen’s University Belfast.

Dr Bronagh Byrne is Lecturer in the School of Social Sciences, Education and Social Work Co-Director of the Centre for Children’s Rights at Queen’s University Belfast.

With contributions by Dr Bronagh Byrne, Professor Hrefna Friðriksdóttir, Dr Simon Hoffman, Prof Ursula Kilkelly, Prof Laura Lundy, Ass Prof Nessa Lynch, Dr Kasey McCall Smith, Dr Tamar Morag, Professor Kirsten Sandberg, Prof Ann Skelton, Dr Rebecca Thorburn Stern, Professor John Tobin, Prof Jonathan Todres, Nico Yaksic and Prof Hongwei Zhang.

Incorporating the UN Convention on the Rights of the Child into National Law
Ursula Kilkelly, Laura Lundy and Bronagh Byrne (eds.)

ISBN 978-1-78068-992-0
approx. 345 pp. | paperback
2020 | € 69 | $ 83 | £ 66

This book is an up-to-date, comparative and international analysis of the progress made around the world to incorporate the CRC.

See page 43

Children’s Rights and Commercial Communication in the Digital Era
Towards an empowering regulatory framework for commercial communication
Valerie Verdoott
KU Leuven Centre for IT & IP Law Series, volume 10
xiv + 332 pp. | hardback
2020 | € 70 | $ 84 | £ 67

See page 35

Trapped in a Religious Marriage
A human rights perspective on the phenomenon of marital captivity
Benedicta Deogratias
Human Rights Research Series, volume 86
ISBN 978-1-78068-842-8
approx. 392 pp. | paperback
2019 | € 85 | $ 102 | £ 81

Need more information? Go to www.intersentia.com.
Human Rights

Domestic Abuse and Human Rights
Jonathan Herring (ed.)
ISBN 978-1-78068-231-0
approx. 230 pp. | paperback
2020 | € 59 | $ 71 | £ 56

The book will include material on the definition of domestic abuse, elder abuse, parental abuse, and the impact of abuse on children. It seeks to bring out the themes which connect these issues as well as the ways in which they raise distinct questions.

The book argues that a human rights approach requires states to take a pro-active stance towards domestic abuse. It should no longer be regarded as a private matter, but as a human rights approach mandating state intervention, although within limits. So understood, the European Convention on Human Rights provides a powerful impetus for states to ensure an effective response to the major problem of domestic abuse.


With Protocol No. 14 entering into force on 1 June 2010, the protection of human rights in Europe and the case law of the Court have seen a dynamic development during the last decade. A completely new edition of Theory and Practice of the European Convention on Human Rights was thus very much needed.

This fifth edition is again an accessible, easy-to-use, complete and up-to-date reference book, which provides an essential source of information for the practitioners, theorists and students in the field of human rights.

The impressive group of distinguished authors combined with the skillful design of the book by its editors make it an essential contribution to the study of the European Convention on Human Rights and an indispensable tool for interested academics and practitioners.

– Professor Wolfgang Benedek
Human Rights

Realising the Right to Water and Sanitation in Nigeria
A Human Rights-Based-Ecosystem Approach
Kasim Balarabe

Human Rights Research Series, volume 87
xvi + 534 pp. | paperback
2019 | € 85 | £ 81

Trapped in a Religious Marriage
A human rights perspective on the phenomenon of marital captivity
Benedicta Deogratias

Human Rights Research Series, volume 86
ISBN 978-1-78068-842-8
approx. 392 pp. | paperback
2020 | € 85 | £ 81

Recognition of the right to water and sanitation is an important and global issue. The Committee on Economic, Social and Cultural Rights explains the obligations of States in realising this right in its General Comment No. 15.

This book investigates how this right can be realised from the context of Nigeria and other States in similar circumstances. Recognising that water is needed by both human beings and other living things, the author approaches the right to water from both a human rights and an environmental perspective. He analyses Nigeria’s laws, policies and practices and assesses their compatibility with the relevant international legal obligations. Through empirical data, the factors contributing to water and sanitation problems and the extent of Nigerians’ awareness of the existence of the right are examined. Legal interpretation, human rights-based and ecosystem approaches demonstrate how the right can be realised in Nigeria.

Kasim Balarabe was born in Kware, Nigeria. He holds a Master of Law degree with specialisation in Law and Politics of International Security from the Vrije Universiteit Amsterdam Netherlands and another Master of Law degree in International Humanitarian Law and Human Rights from the Geneva Academy of International Humanitarian Law and Human Rights. He also holds a Barrister at Law certificate (BL) from the Nigerian Law School and a Bachelor of Laws from the Ahmadu Bello University Zaria, Nigeria.

With the increasing importance of the concept of remedies in European private law, this book focuses on remedies as a distinctive and novel field of European legal research. It considers the common law tradition (England and Wales), as well as the civil law viewpoint (on the example of Germany), making the case for a European law of remedies.

It is argued that ‘remedies’ are an enforcement tool influencing the scope of substantive rights. In doing so, the book analyses different mechanisms of enforcement, including the debate on private versus public enforcement as well as the perspective of criminal law. The enforcement of rights is understood as an intradisciplinary task. Remedial law is, however, distinct from procedural law, as well as from substantive law in a narrow sense.

Subsequent to defining the scope of a law of remedies, this book analyses several underlying principles and common themes. For example, the proportionality test is presented as fundamental principle in European remedial law. The value gained by identifying common ground is e. g. illustrated with respect to damages in European Private Law. Especially in IP law, in turn, the CJEU rulings and secondary European legislation confirm the importance of proportionate remedies. Moreover, within the law of remedies the function of each remedy can be analysed, and respective interests can be balanced.
This book looks at the domestication of children’s rights through the means of constitutionalisation. Landmark judgments from constitutional courts from across the globe have risen to prominence; for example, the constitutional courts of Indonesia and Zimbabwe outlawing child marriage and the constitutional court of Columbia on the assignment of a gender to an intersex born child, to name a few. Further, the CRC Committee continues to recommend State parties to consider enshrining children’s legal rights at the apex level of law, and there is some interest in, for instance, Germany, in pursuing such an approach.

An explicit reference to children’s rights in national constitutions may prevail in cases of conflict and it can provide binding standards for legislative, policy, and regulatory measures. Since the adoption of the CRC thirty years ago, a growing body of jurisprudence in domestic courts has served to illuminate the corresponding challenges and limitations.

Constitutionalised, children’s rights become an important frame of reference for the formulation and implementation of legislation and strengthen children’s standing before the courts. However, many leading constitutional developments remain inaccessible due to language barriers. *Constitutionalisation of Children’s Rights* is a first effort to make developments and case law more accessible. It is an important and invaluable resource for academics and practitioners alike.

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This tribute contains contributions that are focused on human rights, in all their diversity, but with a strong emphasis on the European Convention on Human Rights. This book aims to meet the highest academic standards, as embodied by Paul Lemmens himself. The renowned group of international contributors guarantee these high standards.

This work is also a Festschrift, with each contribution having a clear link to Paul Lemmens. Many authors make this link explicit, while others do this more implicitly, by dealing with a theme that they know Paul takes to heart.

The image of Paul as known and appreciated by his friends and colleagues emerges from the collected contributions: that of an excellent and knowledgeable lawyer, but especially that of a warm and committed person. Few people may know that Judge and Professor Lemmens is a big fan of the American rock star Bruce Springsteen. The (sub) title of this book is gratefully derived from one of his albums, Human Touch. Indeed, there is no better way to describe Paul’s relationship with human rights than “Human Rights with a Human Touch”.

This book looks at the domestication of children’s rights through the means of constitutionalisation. Landmark judgments from constitutional courts from across the globe have risen to prominence; for example, the constitutional courts of Indonesia and Zimbabwe outlawing child marriage and the constitutional court of Columbia on the assignment of a gender to an intersex born child, to name a few. Further, the CRC Committee continues to recommend State parties to consider enshrining children’s legal rights at the apex level of law, and there is some interest in, for instance, Germany, in pursuing such an approach.

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The European Yearbook on Human Rights brings together renowned scholars, emerging voices and practitioners. Split into parts devoted to recent developments in the European Union, the Council of Europe and the OSCE as well as through reports from the field, the contributions engage with some of the most important human rights issues and developments in Europe. The Yearbook helps to better understand the rich landscape of the European regional human rights system and is intended to stimulate discussions, critical thinking and further research in this field.

Philip Czech is a researcher at the Austrian Institute for Human Rights, University of Salzburg and editor of the Newsletter Menschenrechte.

Lisa Heschl is a post-doctoral research and teaching fellow at the European Training and Research Centre for Human Rights and Democracy, University of Graz.

Karin Lukas is a senior researcher and Head of Department at the Ludwig Boltzmann Institute of Human Rights.

Manfred Nowak is Secretary General of the Global Campus of Human Rights and Scientific Director of the Vienna Master of Arts in Human Rights, University of Vienna.

Gerd Oberleitner is UNESCO Chair in Human Rights and Human Security and Director of the European Training and Research Centre for Human Rights and Democracy.

European Yearbook on Human Rights 2020
Philip Czech, Lisa Heschl, Karin Lukas, Manfred Nowak and Gerd Oberleitner (eds.)
approx. 600 pp. | paperback
2020 | € 89 | $ 107 | £ 85

Non-Regression in International Environmental Law
Markus Vordermayer-Riemer
approx. 667 pp. | hardback
2020 | € 139 | $ 167 | £ 132

Process-based Fundamental Rights Review
Practice, Concept, and Theory
Leonie Huijbers
Human Rights Research Series, volume 88
xx + 466 pp. | paperback
2019 | € 95 | $ 114 | £ 90

Fundamental Rights and Best Interests of the Child in Transnational Families
Elisabetta Bergamini and Chiara Ragni (eds.)
xxviii + 322 pp. | hardback
2019 | € 99 | $ 119 | £ 94

Cultural Difference and Economic Disadvantage in Regional Human Rights Courts
An Integrated View
Valeska David
Intersentia Studies on Courts and Judges
ISBN 978-1-78068-833-6
approx. 402 pp. | hardback
2020 | € 125 | $ 150 | £ 119

See page 24
See page 14
See page 20
See page 31
This volume is a compendium of the Sir Hugh Laddie Lectures delivered at University College London (UCL) in the period between 2009 and 2018. This is a public lecture series organised by the Institute of Brand and Innovation Law (IBIL) at UCL Faculty of Laws in honour of IBIL’s founder – Professor Sir Hugh Laddie.

Presented as a collection of verbatim lecture transcripts, rather than formal papers, the book brings the subjects to life by providing the reader with a ‘fly on the wall’ experience. As distinguished IP judges, academics and policy makers, the eminent men and women who gave these lectures have all played a prominent role in shaping the recent development of intellectual property law. The lecture forum affords them the opportunity to speak in a personal capacity, often with surprising candour, which casts what may seem well-worn subject matter in a new and interesting light.

The book, as a whole, highlights controversial legislative policies and decisions, tracks legal shifts and affords extra-judicial perspectives, providing an enlightening and historically relevant snapshot of intellectual property over the last decade. In doing so, it not only provides a valuable reference source for the UK and International IP community but also provides anyone with a true interest in intellectual property law a set of eminently readable essays.

“During a decade when various international relations have become fraught and tense, within the EU and further afield, the Sir Hugh Laddie lecture series has been a bastion of international thinking within IP ... This collection of lectures makes for enjoyable reading for students and experts in IP alike.”

What legal avenues do states have to regulate cannabis cultivations and trade for recreational use? This question has generated heated discussions in various societies, in political and academic discourses. Several states are considering adjusting or have adjusted their legal and policy approaches towards a more lenient regulation of cannabis cultivation and trade for the recreational user market.

Volume I addresses the legal question of to which extent domestic initiatives involving the regulation of cannabis cultivation for recreational use are compatible with the relevant UN narcotic drugs conventions and European Union law.

Volume II takes an innovative approach to this issue and approaches the possibility for regulation of cannabis for recreational use from the perspective of positive human rights obligations.

It is often assumed that the independence of a criminal court is synonymous with the impartiality of judges. However, discussions around the independence of the International Criminal Court are, in most cases, about the Court as an institution and about the work of the Office of the Prosecutor.

The Independence of the International Criminal Court: Between a Rock and a Hard Place focuses on understanding the different competing narratives which defend and critique the Court’s ‘institutional’ independence and legitimacy, and particularly its relationship with Africa. Critical discourse analysis techniques are used to capture the way in which language is used to express the collective power capable of influencing the policies of the Court.

Dr Alphonse Muleefu is a Senior Lecturer at the School of Law of the University of Rwanda.

“This book] provides a tremendously vivid and fascinating study of politics in action. By analysing the public speeches and written texts that mark critical moments in the court’s history, the book offers a desperately needed analysis of the place of politics in the life of the law. [...] A refreshing account of the complex dynamics of discourse. A must read.”

– Professor Kamari M. Clarke, The University of California
International Criminal Law

A. Klip, S. Freeland and A. Low (eds.)

Annotated Leading Cases of International Criminal Tribunals

The Annotated Leading Cases of International Criminal Tribunals Series provides the reader with the full text of the most important decisions, including concurring, separate and dissenting opinions. Distinguished experts in the field of international criminal law have commented the most important decisions.

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Labour and Employment Law

This book provides for a comprehensive overview of the various areas of European labour law: fundamental rights, free movement of workers and posting, equal treatment, a-typical forms of employment, collective bargaining and collective agreements, restructuring of enterprises and health and safety. The chapters are written by eminent experts from a considerable number of EU Member States. Most of them are written by two authors from different Member States.

As a result of this duo-authorship the book does not approach European labour law from a single country perspective, but intends to give insight in the different ways European labour was received and implemented in the various Member States.

The book does not only describe the current state of affairs, but also critically assesses how the interaction of EU legislature, Court of Justice, Member States and social partners has contributed to the development of EU labour law. As such, it is not only a comprehensive introduction to European labour law, but provides also food for thought as part of advanced study in this area.

This handbook, dealing with all important areas of labour law, written from several perspectives by experts, but within a restricted number of pages, is therefore also excellent study material for master programmes of European labour law.

Law and Economics

Macroprudential policy focuses on the financial system as a whole, as distinct from individual institutions, and its objective is to limit the costs to the real economy from system-wide distress of the financial sector.

This book offers a critical, contextual and comparative examination of the nature of macroprudential policy as an emerging legal domain. It explores why macroprudential policy is necessary and how best to design tailored legal, institutional and governance frameworks that support the various supervisory stages in macroprudential regimes. Questions addressed relate to the design of the macroprudential mandate and institutional structures, independence, transparency and accountability arrangements, the nature and limitations of macroprudential authorities' supervisory powers, as well as the challenges that are likely to be encountered during the generation, collection and analysis of data and the use of macroprudential tools.

Dr Anat Keller is a Lecturer in Law at the Dickson Poon School of Law, King’s College London, and a Research Fellow at the Centre for Data Analytics for Finance and Macroeconomics (DAFM) at King’s Business School. She was previously a Teaching Fellow and a Visiting Lecturer in Law at University College London (2007-2016). She is also a qualified solicitor and serves as a Deputy Chief Examiner of the University of London. She is co-author of ‘Law Relating to Financial Services’ and has published numerous articles and chapters in peer-reviewed journals and edited collections focusing on macroprudential policy.
‘It would be pleasant to think that democracies will always wake up to their threats – internal and external – and heal themselves in good time before it is too late. [...] Yet, it is not too late to find public policy solutions which can restore information technologies to their original role of facilitators of democracy rather than their undertakers. But the timeframe is closing and we need these solutions sooner rather than later.

This is why the present volume of expert analyses bringing together many academics arrives at just the right time. It aspires to deepen our understanding of the dangers of fake news and disinformation, but also charts well informed and realistic ways ahead. To my mind, it is certainly one of the most comprehensive and useful studies of this topic to date and I recommend it to the general reader as much as to the policy-maker as a reliable guide and mentor.’

– From the Foreword by Prof. Dr. Jamie Shea, Vesalius College, Brussels

This book addresses a topic of vivid public discussion at both national and international levels where an information technology revolution comes together with pervasive personal data collection. This threat to privacy is peculiar and the old tools, such as consent for personal data processing, fail to work properly in the context of online services. This was clearly seen in the case of Cambridge Analytica which uncovered how easy the procedural requirements of consent and purpose limitation can be abused on a mass scale.

The lack of individual control over personal data collected by online service providers is a significant problem experienced by almost every person using the Internet: it is an ‘all or nothing’ choice between benefiting from digital technology and keeping their personal data away from the extensive corporate surveillance.

The proposed solution remedies the structural problems of the Internet arising from its architectural and informational imbalances and enables the effective exercise of individual autonomy. At the same time, it facilitates the effective operation of online services and recognises the fundamental importance of the use of personal data for the modern economy. All of this is designed to change the way decision-makers think about Internet privacy and form the theoretical backbone of the next generation of privacy laws. It also shows that technology is not intrinsically privacy invasive and that effective regulation is possible.
On 20 November 2019 the United Nations Convention on the Rights of the Child celebrates its 30th anniversary. In 1989, when the Convention was adopted, children came across advertising on television, on billboards in the street, in shops and through leaflets in their mailbox. Over the past 30 years, the way in which children are targeted by advertisers and the formats that are used have changed significantly. Think of advergames, influencer marketing, and behavioural targeted advertising. The specific features of these formats make it difficult for children to understand the commercial and persuasive intent of the commercial messages directed at them.

This book presents an original and timely fundamental rethinking of the regulatory framework of commercial communication from a children’s rights perspective.

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Children’s Rights and Commercial Communication in the Digital Era
Towards an empowering regulatory framework for commercial communication
Valerie Verdoodt
KU Leuven Centre for IT & IP Law
Series, volume 10
xiv + 332 pp. | hardback
2020 | € 70 | $ 84 | £ 67

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This book presents an original and timely fundamental rethinking of the regulatory framework of commercial communication from a children’s rights perspective.
Few people doubt the importance of the security of a state, its society and its organizations, institutions and individuals, as an unconditional basis for personal and societal flourishing. Equally, few people would deny being concerned by the often occurring conflicts between security and other values and fundamental freedoms and rights, such as individual autonomy or privacy for example. While the search for a balance between these public values is far from new, ICT and data-driven technologies have undoubtedly given it a new impulse. These technologies have a complicated and multifarious relationship with security.

This book combines theoretical discussions of the concepts at stake and case studies following the relevant developments of ICT and data-driven technologies. Part I sets the scene by considering definitions of security. Part II questions whether and, if so, to what extent the law has been able to regulate the use of ICT and data-driven technologies as a means to maintain, protect or raise security, in search of a balance between security and other public values, such as privacy and equality. Part III investigates the regulatory means that can be leveraged by the law-maker in attempts to secure products, organizations or entities in a technological and multiactor environment. Lastly, Part IV, discusses typical international and national aspects of ICT, security and the law.

The legal profession has undergone significant changes in the past few years. These have affected working structures and context within the profession, in turn affecting the wellbeing of individual practitioners. This book is the first to consider how these operate in practice and how they impact on the wellbeing of lawyers. This is significant because legal systems cannot operate without properly functioning lawyers.

Changes considered include rapidly evolving technologies such as the internet, artificial intelligence and increasing digitisation, and innovations in legal practice. Such innovations include changes in the structures of law firms, changing requirements about whether lawyers must practice separately from other professions and changing employment practices in law firms.

You can find more books at www.intersentia.com.
Legal History

Justian’s Digest, enacted 533 CE, collects excerpts of high-calibre writings from Roman legal intellectuals, produced in the first and second centuries CE. Since the High Middle Ages it has been used as a quarry of legal concepts and doctrines. Concerning the liabilities of two consecutive attackers, the first of whom mortally wounds the victim, while the second finishes the job and leaves the victim dead, the Digest preserves two conflicting texts: Celsus (67–130 CE) held that the second attacker is liable, under the relevant statute (the lex Aquilia), for killing, whereas the first attacker should be liable for wounding only. Julian (ca 110–ca 175 CE), in contrast, advocated holding both attackers liable as killers.

To the present day, commentators on Justinian’s Digest have been challenged to make sense of the conflict between these two statements. Ever more elaborate interpretations have been advanced, unlocking a range of diverse issues of causality and evidence, deterrence and statutory interpretation. Like few other texts from Roman lawyers, Julian’s essay (D. 9.2.51), mirrored in a colourful spectrum of intellectual responses, emerged as a signature piece of the western legal canon.

Focused on the history of one case, this book provides an exhaustive review of past and present interpretations and makes for a historiography of Roman law scholarship, from its medieval beginnings to our contemporary research activities.

Wolfgang Ernst is Regius Professor of Civil Law, University of Oxford, and Fellow of All Souls College.

Bauhaus Laws

The year 2019 marks the centenary of the founding of the Bauhaus, arguably the most influential school of art and design in the modern era. This book addresses an oft ignored but fundamental question: the ramifications on legal and political thinking caused by the deep-seated transformation of the material world during the so-called age of extremes.

Daniel Damler reveals the finely woven fabric of material and intellectual culture, using the example of New Objectivity to show how radical changes in the design and material vocabulary of objects generate new political and legal paradigms. It was contemporaries of the Bauhaus revolution who began to apply aesthetic maxims such as ‘functional-ity’ and ‘clarity’ to the state and political thought. Our present-day demands for the ‘transparency’ of governments and parliaments (without really knowing what we even mean by this) are very much a part of this tradition.

Bauhaus Laws offers an extraordinary and timeless look at the shadow empire of legal aesthetics. His plea to take seriously the internal dynamics of concepts and figures of thought borrowed from material culture is addressed to legal scholars, political scientists and anthropologists, as well as to architects and designers. It is also aimed at readers who believe in political self-determination and the autonomy of the legal system.

Elegant, powerful, mind-provoking: Bauhaus Laws is a fascinating journey from the aesthetics of architecture to legal thought.

– Prof. Dr. Miloš Vec, Chair of Legal and Constitutional History, University of Vienna
Landmark Negotiations from Around the World
Lessons for Modern Diplomacy
Emmanuel Vivet (ed.)

ISBN 978-1-78068-851-0
xxxvi + 376 pp. | paperback
2019 | € 39 | $ 47 | £ 37

“History can teach today’s diplomats the lessons of a long line of predecessors.”

– From the Foreword by Pierre Vimont,
First Executive Secretary General of the European External Action Service

History is a source of education and insight for modern diplomacy. Through time, this book analyses 30 famous negotiations from around the World: from Roman Republic peace talks to the Philadelphia Convention, the Congress of Vienna and the first UK embassy in China, through two World Wars, as well as more recent examples such as the Iran Security Council resolutions and the Trump negotiations in Korea, just to name a few.

Landmark Negotiations from Around the World brings together the subject areas of history and negotiation studies. It focuses on their overlap and analyses past and present negotiations, applying the latest concepts of negotiation studies: a summary of each negotiation focusing on the chain of events is followed by a critical analysis cross-referencing the facts to modern negotiation theory concepts.

In this way, each chapter provides answers to key questions such as: what made a successful negotiation possible? Why did a given failure occur? It helps us to identify and to qualify the good moves, the brilliant ideas, the unexpected coalitions and the uneasy situations that made a negotiation either a success or a failure.

A handpicked team of authors consisting of historians, diplomats and scholars, all specialising in international negotiation, provide unique insights, as well as entertaining and lively stories past and present, preparing us for the future. A book of interest to anyone who revels in acting on the international stage.

Legal History

The twin ideas of legal validity and invalidity are ubiquitous in contemporary private and public law. But their roots lie buried deep in European legal culture. This book for the first time traces and reveals these roots. In the course of a 2000-year journey through landmark texts of the Western tradition, from Roman law to modern codification and constitutionalism, the book shows that, contrary to what is often assumed, validity and invalidity originated in the domain of private transactions and only gradually came to be deployed in the domain of official power and law-making. This went hand in hand with legal thought’s acknowledgement that law-making itself can be (in)valid, because legally limited, most recently by a body of constitutionally enshrined human rights.

Understanding why, not only when, the technique of validity appeared, teaches valuable lessons about the kinds of social and political transformation that this technique can help realise – particularly in our age of emerging legal orders, shifting forms of governance, and fresh challenges to the regulation of exchanges in a digitally scripted world.

This accessibly written work will appeal to anyone concerned with validity or invalidity in legal scholarship and practice, whether in public or private law.

Dr Maris Köpcke is a Research Fellow at the Faculty of Law, University of Oxford, and a Lecturer at the Faculty of Law, University of Barcelona.

A Short History of Legal Validity and Invalidity Foundations of Private and Public Law
Maris Köpcke
xiv + 160 pp. | paperback
2019 | € 49 | $ 59 | £ 47

Legal Theory

This book analyses in a comprehensive manner the phenomenon of ‘public interest’ in different areas of law, both public and private. The term ‘public interest’ can be found in a wide range of legislation and it is used extensively in judicial practice and public administration. Yet, it has received surprisingly little attention in academia.

The book’s objectives are manifold. First and foremost, it aims to provide a definition of the notion of public interest and to determine its main attributes, particularly against the background of the notion of private interest. In order to achieve this, the concept’s philosophical underpinnings are outlined, as are its historical developments and its application in different times and socio-economic conditions. Consequently, the book assists in applying the concept of public interest with a clear understanding of its substance, normative function and its relationship to other relevant legal institutions.

The book focuses on the concept’s application across the spectrum of legal disciplines ranging from constitutional and administrative law to corporate and insolvency law, from criminal law to environmental law, and from competition law to labour law. In order to provide concrete examples of legislative and judicial practice, the book analyses three jurisdictions in particular – Austria, the Czech Republic and the European Union.

This book is not only an important addition to legal scholarship but, importantly, contributes to the improvement of decision-making processes at all levels of government.

Public Interest in Law
Luboš Tichý (ed.)
ISBN 978-1-78068-970-8
approx. 368 pp. | hardback
2020 | € 89 | $ 107 | £ 85

Need more information? Go to www.intersentia.com.
The European lawmaker is currently overseeing a paradigm shift in the way that cross-border litigation is conducted within the European Union. This matter was initially conceptualised from the perspective of international judicial cooperation, based on the notion of mutual trust and mutual recognition. Recent developments, however, have introduced the option of harmonisation as a new regulatory approach.

The first part of the book focuses on the possible methodological approaches at hand. Special emphasis is placed on the role of the Court of Justice of the European Union as a “promoter” of a European Procedural Law (principle of effectiveness and principle of equivalence). The second part assesses to what extent harmonisation is already used: “vertically”, through the regulations on international judicial cooperation, for example the European Account Preservation Order; and “horizontally”, through the promotion of harmonised standards promoted by the directives on intellectual property rights and competition damages (access to information and evidence), or in the directive on trade secrets and in the field of data protection (protection of confidential information). The final part examines two more recent initiatives: ELI-UNIDROIT and the proposal for a directive on common minimum standards of civil procedure in the EU.

This book clearly outlines the motivations of the various national and institutional players in the regulation of civil procedural law and identifies potential obstacles likely to be encountered along the way.
Andrews on Civil Processes is a fresh and stimulating examination of Civil Justice, embracing court proceedings, mediation, and arbitration. A critical and principled treatment of the subject made possible by extensive knowledge not only in the English methods and techniques but also in foreign civil procedural laws.

The work guides the reader through the practice of dispute resolution in all its major forms – public and private, adjudicative and conciliatory – and thus provides a complete picture of the court and arbitration systems, and of the developing technique of mediation. It is an outward-looking work and advisors seeking further leads are assisted by detailed citation of primary sources and rich bibliographical references to national and foreign works.

As a fundamental and systematic treatment of the subject by a leading expert, this fully revised and updated 2nd edition is an essential work of reference. As many non-resident parties choose to conduct arbitration in London or bring proceedings before the English High Court, the book is also of interest to the lawyers beyond England and Wales.

Neil Andrews is Professor of Civil Justice and Private Law, University of Cambridge. He researches in the fields of dispute resolution and contract law. He was the English representative on the working party responsible for the American Law Institute, of which he is a member. He is a barrister, Bencher of Middle Temple (London) and a member of the Royal Flemish Academy of Belgium for Science and the Arts.

Civil enforcement agents (bailiffs) are part of the machinery of justice and exercise state authority, yet their role and regulation have been subjected to little academic scrutiny. This is all the more astonishing given that they exercise state authority and, in most jurisdictions, have extensive access to information about debtors, as well as significant coercive powers.

This book seeks to expose to view this fertile research territory. In doing so, it sets out two objectives. First, to highlight and explain the diversity of bailiff organisations in Europe. Second, to ask how far governments are taking responsibility for the public management of enforcement activities in the light of their impact on citizens and the increased significance attributed to personal autonomy and financial capability in the ‘neoliberal’ era.

Wendy Kennett is a Senior Lecturer in Law at Cardiff University. She was the Founding Chair of the Bailiff Law Reform Group (BLRG), now the Enforcement Law Review Group – a cross-industry, non-policy making discussion forum (now chaired by Lord Lucas), with the Civil Court Users Association (CCUA) as Secretariat. She is a Member of the International Association of Procedural Law and of the CIVEA Compliance, Adjudication and Review of Enforcement (CARE) Panel. She is a former EU Commission expert on enforcement and has participated in a number of EU funded projects on comparative and cross-border enforcement.
This is a fresh and stimulating book on new challenges for civil justice. It brings together leading experts from across the world to discuss relevant topics of civil justice from regional, cross-border, international and comparative perspectives. Inter alia, this book will focus on multinational rules and systems of dispute resolution in the era of a global economy, while also exploring accountability and transparency in the course of civil justice. Transnational cooperation in cross-border insolvency, regionalism in the process of recognition and enforcement of foreign titles, and the application of electronic technologies in judicial proceedings, including new types of evidence also play a major role.

Technology, the Global Economy and other New Challenges for Civil Justice is a compact and accessible overview of new developments in the field from across the world and written for those with an interest in civil justice.

Koichi Miki is a professor of law at Keio University, Tokyo (Japan) and president of the Japanese Association of the Law of Civil Procedure.

With contributions by Koichi Miki, Frédérique Ferrand, Margaret Woo, Christoph A. Kern, Athanassios Kaisiss, Linda Silberman, Yulin Fu, Daniel Mitidiero, Georg Kodek, Jun’ichi Matsushita, Ronald A. Brand, Tanja Domej, Francisco Verbic, Moon-Hyuck Ho, Etsuko Sugiyama and Joan Picó I Junoy.
Several Member States of the European Union have concluded treaties and conventions with third States dealing with questions of succession law in cross-border matters. Some of these treaties originate from the beginning of the 20th century and are outdated. The European legislator, however, cannot supersede these treaties and conventions unilaterally with its regulations, in fact they enjoy priority over the European Succession Regulation. The harmonizing effect of European private international law is hence endangered, the more so, as these treaties and conventions often cover large groups of third State nationals in the respective Member State.

This book analyzes the background, scope and practical impact of bilateral treaties and multilateral conventions concluded by selected Member States of the European Union with third States, both from the European and the third State perspective. It evaluates the impact of these treaties and conventions on the functioning of the European Succession Regulation and the possibilities to facilitate the interplay between these instruments and European private international law.

Over the course of the last few decades, the European legislature has adopted a total of 18 Regulations in the area of private international law, including civil procedure. The resulting substantial legislative unification has been described as the first true ‘Europeanisation’ of private international law, and even as a kind of ‘European Choice of Law Revolution’. However, it remains largely unclear whether the far-reaching unification of the ‘law on the books’ has turned private international law into a truly European ‘law in action’:

To what extent is European private international law actually based on uniform European rules common to all Member States, rather than on state treaties or instruments of enhanced cooperation? Is the manner in which academics and practitioners analyse and interpret European private international law really different from previously existing domestic approaches to private international law? Or, rather, is the actual application and interpretation of European private international law still influenced, or even dominated, by national legal traditions, leading to a re-fragmentation of a supposedly uniform body of law?

In bringing together academics from all over Europe, How European is European Private International Law? sets out to answer – for the first time – these crucial and interrelated questions. It sheds light on the conspicuous lack of ‘Europeanness’ currently symptomatic of European private international law and discusses how this body of law can become truly European in character in the future.

“... A truly pioneering work ... This is what successful European legal research with practical value looks like!”

– Prof. Dr. Peter Mankowski, ErbR (2020)
How to choose the most beneficial enforcement regime for cross-border claims of a client? A question considerably complicated by (1) the existence of various European Union enforcement tools and (2) particularities in the national legal systems that impact on the operation and suitability of the various enforcement tools.

This book compares and analyses the practical utility and potential pitfalls of the 2nd generation regulations (European Enforcement Order, European Order for Payment, European Small Claims Procedure and European Account Preservation Order) and their relation to Brussels Ibis. Further, it analyses whether and to what extent all of the 2nd generation EU regulations prove their worth in the cross-border enforcement of claims, and which measures can be recommended for their practical improvement and for achieving greater consistency in European enforcement law.

The work is based on an extensive evaluation of case law (more than 500 published and unpublished judgments), empirical data (150 interviews with practitioners) and literature from eight Member States (Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Poland, Spain) and the Court of Justice of the European Union. It provides an extensive and up-to-date picture of the cross-border enforcement of claims across Europe and is an important resource for academics and practitioners alike.

This book is devoted to the applicable law to contractual and non-contractual obligations in the European Union. The Rome I and II Regulations provide uniform conflict of laws rule in order to avoid undue forum-shopping. In theory all national courts of EU Member States (excluding Denmark) apply the same rules determining the applicable law. Rome I and II in Practice examines whether the theory has been put into practice and assesses difficulties that may have arisen in the interpretation and application of these Regulations. Such study appears invaluable as the Rome I and II Regulations may be seen as a critical stepping stone towards the construction of a true and far-reaching European Private International Law.

Emmanuel Guinchard is a Senior Lecturer in Law at Northumbria Law School, United Kingdom. His teaching and research focuses on Private International Law, European Union Law, World Trade Organization Law, and Competition Law.
Private International Law (PIL) in Europe is marked by fragmentation and complexity. At EU level, thus far six separate regulations determine the applicable law in different fields of the internal market (e.g. contractual/non-contractual obligations, divorce, succession). While their scope and structure are similar, they do not offer a coherent picture of EU PIL. Moreover, the regulations do not address certain issues at all. To make matters even more complicated, national PIL rules of the Member States apply for areas not yet covered by EU PIL.

This state of affairs has sparked a debate on whether a set of general rules or perhaps a special regulation (“Rome 0”) could help to reduce this complexity. But no common position, even on the scope of such a set of rules, has been reached yet.

Felix M. Wilke is a senior assistant and university lecturer at the law and business school of the University of Bayreuth. He holds an LL.M. from the University of Michigan Law School which he attended as a Grotius Fellow. Before returning to the University of Bayreuth, he was a law clerk at the Hanseatic Higher Regional Court of Hamburg.

This book systematically and exhaustively analyses existing PIL rules and issues in EU and national legislation, covering all EU Member States in the process. It then demonstrates that the characteristics of PIL themselves imply a framework for “general issues” – independently from language, codification or underlying legal tradition. The book concludes with possible implications for the EU from a law and policy perspective.

Private International Law / Conflict of Laws

A Conceptual Analysis of European Private International Law
The General Issues in the EU and its Member States
Felix M. Wilke

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Property Law

Contract and Property with an Environmental Perspective
Siel Demeyere and Vincent Sagaert (eds.)

Property Law Series, volume 10
ISBN 978-1-78068-865-7
approx. 300 pp. | hardback
2020 | € 90 | $ 108 | £ 86

As the latter illustrates, several legal systems have recently introduced legal devices with a view to enhance environmental protection on the edge between contract and property.

Contract law and property law are traditionally opposed to each other, but in both, more and more legal devices overcome the differences. These devices are developed in several national legal systems, such as the ‘kwalitatieve verplichting’ in Dutch law and the ‘obligation réelle environnementale’ in French law.

Effects of Mistake and Other Defects on the Passage of Legal Title
Samuel Zogg

xxvi + 200 pp. | paperback
2019 | € 79 | $ 95 | £ 75

This book analyses the mechanics of how legal ownership in tangible movable property is transferred from one person to another and whether certain kinds of defects, particularly mistakes, may prevent its passage. Though this area of the law may well be regarded as a core area of English private law, it has not yet received much attention in academic literature.

It is argued that English law, on its best interpretation, and contrary to the traditionally accepted approach, adopts a principle of separation (i.e. that the underlying contract or other transaction is notionally distinct from the conveyance of title) and abstraction (i.e. that the conveyance of title is not dependent on the validity of the underlying contract or other transaction). This applies for transfers by delivery, transfers by sale and transfers by deed. Further, it is very rare for mistakes to prevent the passage of ownership. In fact, title passes unless the transferor’s intention to transfer property is virtually absent altogether. For this purpose, an analogy is drawn with the distinctions made in Shogun Finance Ltd v Hudson.

Dr Samuel Zogg is a senior lecturer at the University of Zurich, Switzerland, an attorney at law and law clerk at the Zurich Court of Appeal (civil law chamber).
Real Obligations at the Edge of Contract and Property
Siel Demeyere

This book extensively analyses obligations connected to property rights, or ‘real obligations’, in a comparative perspective through a study of Belgian, French, Dutch and Scots law.

A real obligation differs in several aspects from a personal obligation. A real obligation is for instance so closely connected to a property right that the obligation transfers automatically to the transferee of the property right. After defining real obligations and the exclusion of several related legal mechanisms in Part I, the regime of real obligations is analysed in Part II. The liability of both the transferor and transferee for real obligations, which are for many property rights under-regulated, for instance, are analysed in detail.

Those findings are applied to the specific property rights in Part III, so that particular problems for a specific property right are also analysed and, where possible, solved. For instance, the role of party autonomy in the creation of a long lease right is studied.

Part IV deals with legal mechanisms most of which have recently been introduced, allowing to connect obligations to a piece of property, outside the traditional framework of property rights, such as the Dutch ‘qualitative obligation’ and the French obligation réelle environnementale. The book ends with a discussion of the possibility and desirability of the (broader) introduction of such real obligations, which could entail the introduction of new property rights sui generis.

In the past decades the coordination of social security provisions of the European Union have become of vital importance. This book gives a clear overview of the main lines and main developments of this significant part of EU law.

On 1 May 2010 a new Coordination Regulation on social security for migrant workers, Regulation 883/2004, came into force. Since then there has been important case law and there have been very interesting developments, in particular in the area of posting of workers and the influence of the Treaty on the interpretation of coordination provisions. Also the development of the concept of EU citizenship has had an important impact on access to social rights. This book gives a clear overview of these developments, their effects on national case law and the differences with the old coordination Regulation.

A second main part of EU social security law is that of social policy. In this book the main developments of the equal treatment law of men and women are explained and in addition the present social policy measures and the instruments employed in this area are outlined.

This book is the seventh edition of this authoritative handbook, which is used in many courses on European social security and of which already several translations have been made in other languages.
Evidence-based medical guidelines are an inescapable element of current medical practice, but how are they developed? This book interrogates what causes these differences and similarities between guidelines and uncovers the mechanisms behind the development of medical practice guidelines.

Four case studies, on lower back pain and on type 2 diabetes in England and the Netherlands, are used to provide a detailed empirical account of the development of medical guidelines. Interviews with guideline developers are combined with a detailed analysis of guideline documents. Theories from science and technology studies, institutional literature, group decision-making, and professional self-regulation are used to demonstrate how the development of guidelines involves a series of subjective choices driven by economic, cultural, institutional and political frames.

The book will be of interest to guideline developers, medical professionals, policy makers, sociologists and lawyers who are interested in the interaction of science and law. It provides rich empirical data into the often opaque and little understood world of rule-making by experts.

Dr Friso Jansen is Senior Law Lecturer at Birmingham City University and holds a DPhil in Socio-Legal Studies from the University of Oxford. He is an experienced academic with a particular focus on the interaction of science and law.

SEE ALSO:

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  2020 | € 75 | $ 90 | £ 71

- The Impact of Technology and Innovation on the Well-Being of the Legal Profession  
  Michael Legg, Prue Vines and Janet Chan (eds.)  
  approx. 343 pp. | paperback  
  2020 | € 79 | $ 95 | £ 75
Compensation funds are used in vastly different ways across jurisdictions and legal traditions. They are an alternative to traditional tort, insurance and social security structures, and change or eliminate ordinary liability rules for certain classes of victims. Compensation funds have been established to solve liability problems in the domains of traffic accidents, financial deposits, crime victim redress, industrial and environmental damage, natural disasters and healthcare damage. They are popular with lawmakers, but their undefined nature (and sometimes incoherent status) raises important legal questions that have not yet been fully answered.

The way that compensation funds have developed in different jurisdictions has not always been consistent with the rest of the legal system within that jurisdiction.

The contributions in this book consider the way in which these funds have been used in Belgium, France, Germany, the Netherlands, New Zealand, Spain, and the United Kingdom. Focusing on their functions, purpose, funding and quantum of compensation, new conclusions are drawn on the objectives of compensation funds and how they differ from insurance and social security.

Thierry Vansweevelt is a professor and former Dean of the Faculty of Law, University of Antwerp.

Britt Weyts is a professor of law at the University of Antwerp.

Prescription is a major legal defence that bars civil actions on the claim after the expiry of a certain period of time. Despite its far-reaching practical effects on litigation and on society at large, and the fact that it is the subject matter of pervasive legal reforms in many countries, the law of prescription (limitation of actions) is rarely discussed, analysed and compared.

To meet this challenge, this book canvases in-depth the law of 15 selected jurisdictions (covering Europe, South Africa and the US jurisdictions) and extensively analyses in comparative perspective the elements of prescription (accurr of the cause of action, prescription periods, rules of suspension, renewal, extension, etc), their interrelations, and the policy considerations (including economic analysis). Topics also covered include the notions of ‘action,’ ‘claim,’ and ‘cause of action,’ subjective and objective prescription, statute interpretation and judicial discretion. The book concludes with how the present law can be improved and where suitable harmonised. While its main focus is the prescription of tort claims, the analysis, comparison and conclusions are highly relevant to most civil actions.

Prescription in Tort Law is the result of a three-year research project lead by the European Group on Tort Law (EGTL) that brings together leading academics of the field. It is an invaluable resource for private lawyers.
This book analyses proprietary restitution, at law and in equity, and inquires whether proprietary relief is available in defective transfers of property, such as mistaken payments. Refining the Birksian event-based classification of rights, it offers a coherent and rationalised approach to the transfer, creation and tracing of proprietary rights in general. The book sets out the current state of the law and discusses a vast body of case law.

It is argued that the scope of proprietary relief following defective transfers of property is quite limited. Legal or equitable title in the transferred property remains vested in the transferee if his intention to execute the transaction is virtually absent altogether. If only equitable ownership is retained, a resulting trust comes into being. If legal and equitable ownership passes, the law of rescission might provide a power in rem which equips the respective party with a proprietary interest. Apart from that, however, no proprietary relief is available in defective transfer cases. In particular, constructive trusts have no role to play in this context.

**Proprietary Consequences in Defective Transfers of Ownership**

An Analysis of English Common Law and Equity

Samuel Zogg

ISBN 978-1-78068-824-4

approx. 700 pp. | hardback

2020 | € 145 | $ 174 | £ 138

All European legal systems recognise a boundary between the domains of tort and contract. While there have been voices contending that this distinction is no longer valid or at least that there should be a unification of the two sets of rules in particular contexts, others claim that there is still a very important distinction to be maintained. In fact the boundary between the two areas is often blurred and whether it is drawn in one place or another varies from country to country, giving rise to the paradox that what is considered a matter of contractual liability in one legal system is governed exclusively by tort law in another.

This volume explores how differences between tort and contract affect the foundations of liability, the nature and amount of the compensation, the extent of liability and whether defences and limitation periods corresponding to the distinct causes of action give rise to substantially different outcomes. It also analyses to what extent actions in tort and in contract exclude each other and, when this is the case, how their concurrence is organised. Lastly it devotes its attention to specific situations such as pre-contractual liability and the liability of professionals.

**Miquel Martin-Casals** is Professor of Civil Law at the University of Girona (Spain) since 1993. Previously he was Assistant Professor of Civil Law (University of Barcelona, 1980) and Associate Professor of Civil Law (Autonomous University of Barcelona 1986).

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**The Borderlines of Tort Law: Interactions with Contract Law**

Miquel Martin-Casals (ed.)

Principles of European Tort Law


xii + 846 pp. | paperback

2019 | € 85 | $ 102 | £ 81

This volume explores how differences between tort and contract affect the foundations of liability, the nature and amount of the compensation, the extent of liability and whether defences and limitation periods corresponding to the distinct causes of action give rise to substantially different outcomes. It also analyses to what extent actions in tort and in contract exclude each other and, when this is the case, how their concurrence is organised. Lastly it devotes its attention to specific situations such as pre-contractual liability and the liability of professionals.

**Miquel Martin-Casals** is Professor of Civil Law at the University of Girona (Spain) since 1993. Previously he was Assistant Professor of Civil Law (University of Barcelona, 1980) and Associate Professor of Civil Law (Autonomous University of Barcelona 1986).
Business and Finance

Governance: The Art of Aligning Interests
Liber amicorum
Lutgart Van den Berghe
Abigail Levrau and Sandra Gobert (eds.)
ISBN 978-9-4000-0997-4
xxiii + 346 pp. | hardback
2019 | € 99 | $ 119 | £ 94

This Liber Amicorum brings together contributions by Xavier Baeten, Roger Barker, Bruno Colmant, Jan De Groof, Koenraad Debackere, Xavier Dieux, Kristof Eeckloo, Yves Fassin, Mark Fenwick and Erik P.M. Vermeulen, Rita Goyal, Andrew and Nada Kakabadse, Philippe Haspeslagh, Philippe Lambrecht, Abigail Levrau, Fanny Dhondt and Marc Timmerman, Herman Van den Broeck and Barney Jordaan, Christoph Van der Elst, Rudy Vander Vennet and Elien Meuleman, Louis-Henri Verbeke, Kurt Verweire, Jaap Winter and Eddy Wymeersch.

Financial Management in Practice
2nd edition
Rudy Aernoudt
ISBN 978-1-78058-888-6
xix + 418 pp. | paperback
2019 | € 59 | $ 71 | £ 56

This book goes beyond the classical academic approach and opts for an approach whereby the theoretical insights are systematically illustrated by concrete cases and exercises. This approach makes this book very suitable both for financial managers and for university and high school students.

Beginning with a description of the current banking and entrepreneurial landscape, the book examines the basic concept of financial management. The business plan and financing plan become the working tools in the author’s search for optimal financing and in determining the value of the enterprise. This is followed by an analysis of all forms of debt financing such as overdraft, investment credits, straight loans, leasing and factoring.

Subsequently, the book examines mezzanine financing, formal and informal venture capital, including business angels and crowdfunding, as well as stock quotations and initial public offerings. It concludes with a review on the Basel Accords from the viewpoint of the entrepreneur.

The book also contains a glossary of major financial terms, tables with annuity factors and solutions to the exercises.

Rudy Aernoudt is Professor of Corporate Finance and Enterprise Policy at the Universities of Ghent and Nancy.

In contrast to the rather academic approach taken by other authors, Professor Aernoudt opts for an approach based on practice, with cases and exercises to enhance understanding of various theoretical approaches. This book therefore fills an important gap.

— Colin Mason, Professor of Entrepreneurship, Adam Smith Business School, University of Glasgow
Entrepreneurship is a mindset. However, studies show that continental Europe is not structurally or culturally geared towards encouraging entrepreneurship. Starting from this hypothesis the authors of this work show how Europe could be made entrepreneurship-friendly. The process of entrepreneurship is discussed from start to growth. The authors advocate the development of an entrepreneurship culture in which success is applauded and which still has room for failure, arguing that this is the only way to create sustainable growth and employment.

In relation to policy, the authors show that classical subsidy policy often has a counterproductive effect, keeping alive lame ducks and hindering real entrepreneurs in their growth. Furthermore, they argue that subsidies kill the economy. Incubators and innovative financing tools such as business angels, crowd-funding and seed money are discussed as viable options for entrepreneurs to fund their pursuits.

However these instruments only make sense in an entrepreneurial environment. A radical shift towards entrepreneurship policy is therefore needed to guarantee a prosperous economy and much better value for public money. Entrepreneurship should be(come) a way of life.

Rudy Aernoudt is Professor of Corporate Finance and Enterprise Policy at the Universities of Ghent and Nancy.

“The task now for practitioners, government administrators, academics and policy makers is to work together to build a partnership and develop an infrastructure that will enable dynamic change to continue and support the phenomenon of entrepreneurship.”
Title Index

A
Adults and Children in Postmodern Societies 12, 32
Annotated Leading Cases of International Criminal Tribunals – volume 54 40
Annotated Leading Cases of International Criminal Tribunals – volume 55 40
Annotated Leading Cases of International Criminal Tribunals – volume 56 40
Annotated Leading Cases of International Criminal Tribunals – volume 58 40
Annotated Leading Cases of International Criminal Tribunals – volume 59 40

B
Bauhaus Laws 45
Belgian and European Perspectives on Creditor Protection in Closed Companies 10
Borderslines of Tort Law, The 13, 58

C
Children’s Rights and Commercial Communication in the Digital Era 33, 43
Civil Enforcement in a Comparative Perspective 13, 26, 49
Civil Procedure and Harmonisation of Law 50
Collective Judging in Comparative Perspective 21
Comparative Administrative Law 4
Comparative Concepts of Criminal Law 4, 22
Compensation Funds in Comparative Perspective 56, 57
Conceptual Analysis of European Private International Law, A 27, 53
Constitutionalisation of Children’s Rights 15, 32, 36
Constitutions Compared 4, 15
Consumer Protection in a Circular Economy 16, 24, 26
Consumer Sales Remedies in US and EU Comparative Perspective 16
Contract and Property with an Environmental Perspective 24, 54
Contract Law in the South Pacific 5, 18
Contract Rules 4
Corporate Finance 5
Corporate Insolvency Law 5, 10, 13
Criminal Justice System of the Netherlands, The 23
Cultural Difference and Economic Disadvantage in Regional Human Rights Courts 20, 37

D
Disinformation and Digital Media as a Challenge for Democracy 42
Domestic Abuse and Human Rights 34

E
Eastern and Western Perspectives on Surrogacy 12
Effectiveness and Application of EU and EEA Law in National Courts, The 21, 27
Effects of Mistake and Other Defects on the Passage of Legal Title 54
Elderly Care and Upwards Solidarity 28, 56
Enforcement of Intellectual Property Rights in the EU Member States 38
Enforcing Consumer and Capital Market Law 11, 12, 16, 50
Entrepreneurship: No guts no glory 5, 60
EU Law Duty of Consistent Interpretation in German, Irish and Dutch Courts, The 8, 26
European Company Law 3
European Consumer Law 3
European Criminal Law 3
European Employment Law 3
European Energy Law Report XIII 23, 26
European Free Trade Association, The 25
European Labour Law 4, 24, 41
European Legal Methodology 3
European Legal Principles as Applied in Hong Kong 7
European Migration Law 3
European Private International Law and Member State Treaties with Third States 27, 51
European Social Security Law 3, 55
European Yearbook on Human Rights 2020 27, 37

F
Financial Management in Practice 5, 59
Foreign Investment and Investment Arbitration in Asia 12
Foreign Investment, Strategic Assets and National Security 13
From Catholic Outlook to Modern State Regulation 15, 29
Fundamental Rights and Best Interests of the Child in Transnational Families 27, 31, 37, 53
Future of the European Law of Civil Procedure, The 26, 48

G
Governance: the Art of Aligning Interests 59

H
Handbook on Legal Methodology 4
How European is European Private International Law? 25, 51
Human Resource Management: Basics 5
Human Rights with a Human Touch 36

I
IJPL 2019 no. 1 50
Impact of Technology and Innovation on the Well-Being of the Legal Profession, The 44, 56
Incorporating the UN Convention on the Rights of the Child into National Law 12, 32, 33
Independence of the International Criminal Court, The 39
Informed Choices in Cross-Border Enforcement 13, 27, 52
Interaction Between Family Law, Succession Law and Private International Law, The 50, 53
International Jurisdiction: Rules or Discretion? 7, 53
International Law and Cannabis – set 39
International Survey of Family Law 2020 30
Interpretation and Gap Filling in International Commercial Contracts 18
Interpretation of Commercial Contracts in European Private Law 12, 19
Introduction to South Pacific Law 5
Islamic Finance 9

J
Judicial Law-Making in English and German Courts 13
Judicial Review and Strategic Behaviour 8, 21
Justicein’s Digest 9.2.51 in the Western Legal Canon 45

L
Landmark Negotiations from Around the World 46
Law of Remedies 17, 26
Legal Foundations of Macropreudential Policy 41

M
Materials on European Criminal Law 3

N
National and International Anti-Money Laundering Law 9, 12, 22
Non-Regression in International Environmental Law 24, 37

P
Party Autonomy in EU Private International Law 25, 29, 33
Peaceful Revolution, A 22, 26
Plurality and Diversity of Family Relations in Europe 27
Prescription in Tort Law 13, 57
Principles of Cross-Border Insolvency Law 5
Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions 27, 28
Principles of Good Governance and the Ombudsman 7
Privacy Online, Law and the Effective Regulation of Online Services 42
Procedural Autonomy Across Europe 48
Process-based Fundamental Rights Review 14, 37
Professional Regulation and Medical Guidelines 56
Proprietary Consequences in Defective Transfers of Ownership 58
Public Interest in Law 47

R
Real Obligations at the Edge of Contract and Property 55
Rea lising the Right to Water and Sanitation in Nigeria 35
Reliance in the Breaking-Off of Contractual Negotiations 13, 17
Rome I and Rome II in Practice 25, 52

S
Safeguarding Children’s Rights in Immigration Law 31, 56
Security and Law 44
Short History of Legal Validity and Invalidity, A 47
Sir Hugh Laddie Lectures, The 38
Solvency Requirements for EU Insurers 25

T
Technology, the Global Economy and other New Challenges for Civil Justice 50
Theory and Practice of the European Convention on Human Rights 4, 34
Trapped in a Religious Marriage 33, 35

U
UK after Brexit, The 4

V
Virtual Currencies: A Legal Framework 43

W
When an Original is Not Original 38

61
Author Index

A
Aernoudt, R.  5, 59, 60
Alofs, E.  28, 56
Andrews, N.  4, 49
Askeland, B.  13, 57

B
Baaij, C.J.W.  12, 19
Balarabe, K.  35
Banet, C.  23, 26
Bargel, E.  30, 53
Baur, G.  25
Bergamini, E.  27, 31, 37, 53
Betkier, M.  42
Boeles, P.  3
Boele-Woelki, K.  27, 28
Bork, R.  5, 10, 13
Brenncke, M.  13
Brinig, M.  30
Brinkhoff, S.  23
Bruloot, D.  10
Byrne, B.  12, 32, 33

C
Cabreri, D.  12, 19
Cadet, L.  50
Caers, R.  5
Castro, C.  27, 37

D
Damier, D.  45
David, V.  20, 37
De Jaegere, J.  8, 21
Decock, W.  9
Deloof, M.  5
Demeyere, S.  24, 54, 55
den Heijer, M.  3
Deogratias, B.  33, 35
Dougan, M.  4
Ducuing, C.  44
Dutta, A.  27, 51

E
Ernst, W.  21, 45
Espluguès, C.  12, 13

F
Fedorova, M.  39
Ferrand, F.  27, 28
Fijnaut, C.  22, 26
Franklin, C.N.K.  21, 27
Freeland, S.  40

G
Gascón Inchausti, F.  26, 48, 50
Gilead, I.  13, 57
Gobert, S.  59
González-Beitluss, C.  27, 28
Gray, J.  25, 29, 53
Grundmann, S.  3
Gsell, B.  11, 12, 16, 50
Guinchard, E.  25, 52

H
Häcker, B.  21
Hakel, S.  8, 26
Harding, M.  15, 29
Heringa, A.W.  4, 15
Herring, J.  34
Heschl, L.  27, 37
Hess, B.  26, 48, 50
Hofmann, F.  17, 26
Huijbers, L.  14, 37

J
Jacob, R.  38
Jansen, F.J.  56
Jansen, S.  16
Jünterä-Jareborg, M.  27, 28
Jaspers, T.  4, 26, 41

K
Karadagyl Yalim, A.N  18
Keirsbilck, B.  16, 24, 26
Keller, J.  4, 22
Keller, A.  41
Kennett, W.  13, 26, 49
Kestemont, L.  4
Kieninger, E.-M.  25, 51
Kikkeluy, U.  12, 32, 33
Klaassen, M.  31, 56
Klip, A.  3, 40
Kloza, D.  42
Köpcke, M.  47
Krabbe, M.  23
Krans, B.  48
Krüger, T.  13, 27, 52
Kurz, F.  17, 26
Kuzelewiska, E.  42

L
Legg, M.  44, 56
Lemmens, K.  36
Levrau, A.  59
Liefard, T.  31, 56
Lodder, G.  3
Lowe, N.  27, 28
Lukas, K.  27, 37
Lundy, L.  12, 32, 33

M
Ma, G.  7
Macgregor, L.  12, 19
Manigart, S.  5
Martin-Casals, M.  13, 58
Martini, D.  27, 28
Micklitz, H.-W.  3
Miki, K.  50
Möllers, T.M.J.  11, 12, 16, 50
Motte, G.  12, 32
Muleeuf, A.  39

N
Nowack, M.  27, 37
Nyland, A.  48, 50

O
Oberleitner, G.  27, 37
Ooghe, H.  5

P
Partmentier, S.  36
Pennings, F.  3, 4, 26, 41, 55
Peters, S.  4, 26, 41
Petillion, F.  38

R
Ragni, C.  27, 31, 37, 53
Rap, S.  31, 56
Reich, N.  3
Reynjens, L.  36
Riesenthalber, K.  3
Rodrigues, P.  31, 56
Roel, D.  4, 22
Rogerson, P.  7, 53
Roggenkamp, M.M.  23, 26
Rott, P.  3
Rühl, G.  25, 51

S
Sagaeart, V.  9, 24, 54
Schere, J.M.  12, 30, 53
Schräma, W.  26, 56
Schroers, J.  44
Seerdens, R.  4
Sloth-Nielsen, J.  15, 32, 36
Sosson, J.  12, 32
Strandberg, M.  50

T
Terry, E.  16, 24, 26
Terzis, G.  42
Tichý, L.  47
Todorova, V.  27, 28
Tonner, K.  3
Trottier, D.  42

V
Valcke, P.  44
van Dijk, P.  4, 34
van Hoof, E.  4, 34
Van Hulle, C.  5
Van Hulle, K.  25
van Kempen, P.H.  23, 39
van Rijn, A.  4, 34
Vandevoorde, N.  38, 43
Vansweevelt, T.  56, 57
Vedder, A.  44
Verdoordt, V.  33, 43
Vines, P.  44, 56
Vivet, E.  46
Vogel, B.  9, 12, 22
von Hein, J.  13, 25, 27, 51, 52
Vordermayer-Riemer, M.  24, 37

W
Weerts, B.  56, 57
Wilke, E.M.  27, 53
Willems, G.  12, 32
Wouters, K.  3
Wurmnest, W.  27, 51

Z
Zogg, S.  54, 58
Zuloaga, I.  13, 17
Zwaak, L.  4, 34
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