

CONSUMER SALES REMEDIES IN US AND EU
COMPARATIVE PERSPECTIVE

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Consumer Sales Remedies in US and EU Comparative Perspective

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PREFACE

The primary purpose of this book is to provide an in-depth study of the US and EU approaches towards the organization of consumer sales remedies. Chapter 2 treats the comparison of the hierarchy of consumer sales remedies in a multitude of EU instruments, in US contract law, and the Uniform Commercial Code. In addition, the latest developments in EU law, namely the amended Proposal for a Directive on (online and other distance) sales of goods of 31 October 2017, are briefly discussed. In Chapters 3 and 4, the (extra)judicial application of remedies and notification duties are examined in the same EU/US instruments.

This book aims to contribute to the discussion of what the organization of remedies should look like to best protect consumers. Should we adopt the US system favoring the remedy of damages? Or is specific performance preferred? Or, is there another valuable alternative? How should we define ‘consumer protection’? All these questions are raised at a time when the EU is considering a ‘new’ consumer sales directive, and US scholars have drafted a restatement of consumer contract law, which is intended for discussion at the Annual Meeting Agenda in 2019 (although, regrettably, it will not include all possible aspects of consumer contract law).

This book is designed for EU civil (and common) lawyers and US common lawyers to gain a better understanding of the remedial system and the logic behind it. Due to the differences between those systems, it is sometimes dangerous to use certain terms such as ‘termination’, ‘damages’ and ‘specific performance’. Therefore, specific attention is paid to terminology. By giving a terminological overview, the most commonly used terms are framed and explained within their respective legal systems.

There is inevitably more work to be done in this area and it is ripe for further research by other scholars. The interaction of the remedies is fascinating, but also very complex, and many factors have to be taken into account. Not only their original set hierarchy, but their (extra)judicial application and the notification duties have an important role to play. Therefore, further research is required to unravel the correlation with examination duties, limitation rules, and the relation remedy and the nature of the shortcoming, for example. In addition, the theoretical

underpinning of the 'best' organization of remedies could be further food for thought. How should one, for example the EU lawmaker, deal with the spread of the law and economics logic and behavioral approaches? Which political ends are furthered by adopting one or the other policy? Should we, and if so how, take into account the emotions of consumers?

This book was mainly written during a postdoctoral research stay in the United States. This project has been made possible by a generous fellowship (2016–2017) from the Belgian American Educational Foundation (BAEF) and, more specifically, the Cabeaux-Jacobs Fund. Professor Boulpaep (Yale School of Medicine and President of the BAEF) and Ms Hayoit de Termicourt (Program Manager of the BAEF) deserve, in this regard, a special mention for combining their amazing organizational skills and enthusiastic commitment to helping and supporting young scholars and students. During this year, I was warmly welcomed by the East Coast BAEF community, and the staff and students of Yale Law School and Columbia Law School. More specifically, I must thank Professor Kronman for letting me attend his animated contract law course at Yale Law School and Professor Garro for being my sponsor at Columbia Law School. Without Professor Allemeersch's (KU Leuven) enthusiasm, kind recommendation and advice, the Yale experience would not have been possible. Also, Professor Wéry (UCL) and Professor Samoy (KU Leuven), mentors from the very beginning of my career, have to be thanked. Without their unremitting faith in my projects, this book would not have existed. Last, but not least, Professor Stijns (KU Leuven) deserves my deepest gratitude. She has guided me through this academic adventure from the very first moment. Patient and with eye for detail, she taught me every step. She encouraged me to push my limits and to broaden my academic horizon abroad. Therefore, I dedicate this book to her.

Sanne Jansen, April 2018

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---	---

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Gerechtshof Amsterdam 1 March 2007, n° 1818/05, (ECLI:NL:GHAMS:2007:BA9978).....	25
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