The Draft Common Frame of Reference: national and comparative perspectives
The Draft Common Frame of Reference: national and comparative perspectives
Vincent Sagaert, Matthias Storme and Evelyne Terryn (eds.)

The Draft Common Frame of Reference: national and comparative perspectives
PREFACE

The Draft Common Frame of Reference is the remarkable result of the long-standing efforts of the Study Group on a European Civil Code (the 'Study Group') on the one hand and the Research Group on Existing EC Private Law (the 'Acquis Group'). Together with the comments, the Outline Edition of the DCFR is a most precious basis for the further development of European Private law.

The DCFR has received much academic, political and legal attention throughout Europe. Therefore, the undersigning editors of the book – all members of the Departments of Private and Economic Law of the University of Leuven – were convinced that the finalization of the Draft Common Frame of Reference should not pass without a thorough debate on its starting points and principles in relation to Belgian law. An international conference, largely attended by both legal practitioners and scholars, was organized in Kortrijk at 10–11 June 2010. This book bundles the written reports of this conference, together with other contributions which were submitted by mainly young legal scholars.

The aim of the conference was twofold. First of all, an academic involved in the drafting of the DCFR gives a presentation of a chapter of the DCFR, which provides the readers an overview of the general starting points and main provisions of the DCFR. Secondly, a Belgian scholar presents his view on the reconciliation between the DCFR and Belgian law. We were truly honoured to host such exceptional group of authoritative scholars in European private law, and we are grateful for the time and energy they invested to make this conference successful. Apart from the authors of contributions in this book, our gratitude is also directed towards the colleagues who have chaired the sessions of this conference: Prof. dr. G. Straetmans (University of Antwerp), Prof. dr. E. Hondius (University of Utrecht), Prof. dr. S. Van Erp (University of Maastricht) and Prof. dr. A. Verbeke (University of Leuven, KULeuven)

The conference was organized in the Kortrijk Campus of the University of Leuven. Kortrijk is situated ten kilometres east of the French border, five kilometres north of the language border in Belgium, and one hour by train from London. Geographically situated at a crossroad in Europe, Kortrijk is well placed to host such an international conference.
It should be noted, in reading the contributions, that the authors of the contributions were asked to stick to the outline edition of the Draft Common Frame of Reference. Except for one contribution, the authors could not take into account the optional instrument which aims to introduce “a common European Sales Law to facilitate cross-border transactions in the single market”. Thus, this book genuinely analyses the values and weaknesses of the DCFR, and of its relation to Belgian law, only taking into account the legal feasibility of the DCFR-rules and making abstraction of its political implementation.

Finally, we have to express our gratitude towards our partners, who have enabled us – not only financially – to organize such nice conference: KULeuven KULAK, the Ius Commune Research School, Interreg-Projects.

We modestly hope that this book will be a small step towards the common understanding in European Private Law.

Vincent Sagaert
Matthias Storme
Evelyne Terryn
CONTENTS

Preface ........................................................................................................... v

PART I. GENERAL PRESENTATION OF THE DRAFT COMMON FRAME
OF REFERENCE

The Draft Common Frame of Reference: scope and purpose
    Christian von Bar ...................................................................................... 3

PART II. CONTRACTS AND OTHER JURIDICAL ACTS IN THE DCFR

Contracts and other juridical acts in the DCFR
    Gerhard Dannemann ................................................................................. 9
    1. “Juridical act” and domestic perspectives ................................................. 9
       1.1. Chapter 1 (remaining provisions) ....................................................... 13
       1.2. Chapter 2: Non-Discrimination .......................................................... 13
       1.3. Chapter 3: Marketing and Pre-Contractual Duties ............................... 14
       1.4. Chapter 4: Formation ....................................................................... 16
       1.5. Chapter 5: Rights of Withdrawal ....................................................... 17
       1.6. Chapter 6 ......................................................................................... 18
       1.7. Chapter 7: Grounds of Invalidity ....................................................... 18
       1.8. Chapter 8: Interpretation .................................................................. 19
       1.9. Chapter 9: Content and Effects of Contracts ....................................... 19

Book II, “Contracts and other juridical acts”, of the Draft Common Frame of
Reference from a Belgian perspective
    Patrick Wéry ............................................................................................. 21
    1. The Belgian Civil Code ........................................................................... 22
    2. The role of the judge in the DCFR ........................................................... 25
    3. The protection of the weak party ............................................................. 28
PART III. OBLIGATIONS AND CORRESPONDING RIGHTS UNDER THE DCFR

A. Performance and non-performance in the DCFR

Book III performance and non-performance of obligations and corresponding rights in the DCFR
Denis Philippe ................................................................. 35
1. Scope of application .................................................. 35
2. General principles .................................................... 36
3. Change of circumstances ............................................ 37
4. Remedies in case of non-performance ............................. 39
5. Termination ............................................................. 41
   5.1. Termination for fundamental non-performance can occur without intervention of the judge ........................................... 41
   5.2. Fundamental non-performance .................................. 42
   5.3. Nachfrist ............................................................ 42
   5.4. Right to cure ...................................................... 43
   5.5. Anticipatory breach .............................................. 44
6. Force majeure ........................................................... 45
   6.1. Impediment ......................................................... 46
   6.2. Conditions of this impediment ................................ 46
   6.3. Effects of this impediment ...................................... 47
   6.4. Notification of this impediment ................................. 48
7. Damages ................................................................. 48
   7.1. Principles – Unforeseeable damages .......................... 48
   7.2. Mitigation of damages ........................................... 49
   7.3. Late payment and interest ....................................... 50
8. Exemption clauses ...................................................... 51
9. Conclusion ............................................................... 52

Performance and non-performance in the DCFR. Perspectives from the Belgian law
Ilse Samoy and Tâm Dang Vu ............................................. 53
1. Introduction ............................................................ 53
2. Performance ........................................................... 54
   2.1. Introductory concepts ........................................... 54
   2.1.1. Solvens ......................................................... 55
   2.1.2. Accipiens ....................................................... 57
   2.1.3. Method ........................................................ 59
   2.1.4. Place of performance ....................................... 61
   2.1.5. Time of performance – Early performance ............... 62
   2.1.6. Extra: Alternative obligations – Imputation of partial performance ........................................... 63
3. Non-performance .............................................. 65
   3.1. Accountable non-performance .......................... 65
       3.1.1. Personal non-performance ....................... 65
       3.1.2. Non-performance by a third person ............ 68
       3.1.3. Non-performance due to an object ............. 69
       3.1.4. Burden of proof .................................. 69
   3.2. Non-accountable non-performance ................... 69
       3.2.1. Extraneous cause ................................ 69
           3.2.1.1. Concept .................................... 69
           3.2.1.2. Conditions of applicability ............... 70
           3.2.1.3. Consequences of irresistible force and contractual risk ........................................ 71
       3.2.2. Doctrine on unforeseen circumstances ........ 73
           3.2.2.1. Concept .................................... 73
           3.2.2.2. Rejection of the doctrine of unforeseen circumstances in Belgian law ....................... 73
           3.2.2.3. Alternative solutions in Belgian law ....... 74
           3.2.2.4. Variation or termination by court on a change of circumstances in the DCFR .................. 75
           3.2.2.5. Gains and losses ................................ 75
   3.3. Terms excluding or restricting liability for non-performance: exemptions clauses ................. 76
       3.3.1. Lawfulness ........................................... 76
       3.3.2. Abuse of exemption ................................ 78
4. General remedies for non-performance .................... 78
   4.1. General provisions ....................................... 78
   4.2. Formal requisition of putting the debtor in delay .................................................. 79
       4.2.1. Concept ............................................ 79
       4.2.2. Form and contents .................................. 80
       4.2.3. Consequences ........................................ 80
       4.2.4. Formal requisition of putting the debtor in delay in the DCFR? ................................ 81
   4.3. General remedies in case of faulty behaviour ........ 81
       4.3.1. Performance in kind ................................ 81
           4.3.1.1. Definition and priority rule ................ 81
           4.3.1.2. Performance in kind by the debtor .......... 84
           4.3.1.3. Performance in kind by a third person .... 84
       4.3.2. Performance by equivalent: damages .......... 86
           4.3.2.1. Principle and scope .......................... 86
           4.3.2.2. Payment of a compensation in case of a late payment of a sum of money .................. 87
       4.3.3. Penalty clauses ...................................... 91
           4.3.3.1. Concept and function ........................ 91
           4.3.3.2. Qualification .................................. 91
4.3.3.3. Legality and restriction of exaggerated penalty clauses ........................................ 92
4.3.3.4. Penalty reduction in case of partial performance and control on abuse of rights ........ 93
4.3.3.5. Penalty clauses in the DCFR ......................................................... 94

5. Supplementary remedies for reciprocal contracts ............................................................ 94
   5.1. The right to choose ............................................................ 94
       5.1.1. The right to choose between performance and termination .................. 94
       5.1.2. Cumulation prohibition and change of choice .......................... 95
   5.2. Termination ................................................................. 96
       5.2.1. Three ways to terminate and requirements ......................... 96
       5.2.2. Judicial termination .............................................. 97
       5.2.3. Extra-judicial termination due to an express resolutive clause ............. 98
           5.2.3.1. Concept and qualification ................................ 98
           5.2.3.2. Interpretation ............................................. 98
           5.2.3.3. Legality .................................................... 99
           5.2.3.4. Use of the clause ........................................ 99
           5.2.3.5. A posteriori control by a judge .......................... 99
       5.2.4. Extra-judicial termination in extraordinary circumstances (without expressive clause) ................................................................. 100
           5.2.4.1. Concept ...................................................... 100
           5.2.4.2. Effect and conditions of applicability ....................... 101
           5.2.4.3. Recognition of termination by notice in the DCFR ............... 101
       5.2.5. Consequences of termination and partial termination ....................... 102
   5.3. Suspension ................................................................. 105
       5.3.1. In case of exceptio non adimpleti contractus .......................... 105
       5.3.2. Suspension of the duty to perform in case of irresistible force ............ 107

6. The duty to act in accordance with good faith in performing and the doctrine of prohibition of abuse of rights ................................................................. 107
   6.1. Overview of Belgian law .................................................. 107
   6.2. Comparison with the DCFR .................................................. 109
   6.3. Gains and losses .......................................................... 111

7. Conclusion ............................................................................ 112

The effects of a change of circumstances in the DCFR. A critical assessment
Rodrigo Momberg Uribe ................................................................. 113
   1. Introduction ........................................................................ 113
   2. General considerations ..................................................... 114
   3. The conditions for the application of the remedies ....................... 115
3.1. The changed circumstances have to be exceptional, unforeseen and they must have occurred after the time when the obligation was incurred. 116
  3.1.1. The exceptional nature of the change of circumstances 116
  3.1.2. The debtor did not take into account, and could not reasonably be expected to have taken into account, the possibility or the scale of the change of circumstances 117
  3.1.3. The change of circumstances must have occurred after the time when the obligation was incurred. 118
  3.1.4. Criticism of the exceptionality test 118
  3.2. Excessive and unjust onerousness of the performance 119
  3.3. Risk allocation 121
  3.4. The request for renegotiation 124
    3.4.1. The absence of an obligation to renegotiate 125
  4. Remedies 129
  5. Conclusions 130

B. Multiparty-relationships in the DCFR: representation, stipulation in favour of third party, plurality, change of parties

Multi-party relationships in the DCFR
Eric Clive 135

1. Introduction 135
2. Representation 136
  2.1. Facilitation 136
  2.2. Protection of reasonable expectations 137
3. Stipulations in favour of a third party 139
  3.1. Facilitation 139
  3.2. Protection of reasonable expectations 139
4. Plurality of debtors and creditors 140
  4.1. Justice in solidary obligations 140
  4.2. Protection of reasonable expectations 141
5. Change of parties – general 141
6. Change of parties – assignment 142
  6.1. Facilitation 142
  6.2. Protection of reasonable expectations of debtor 143
  6.3. Protection of reasonable expectations of assignee 144
7. Change of parties – substitution and addition of debtors 144
8. Change of parties – transfer of contractual position 145
9. Transfer of rights and obligations on agent’s insolvency 145
The structure of the law on multi-party situations in the 2009 Draft Common Frame of Reference and Belgian law

Matthias E. Storme ......................................................... 147

1. Direct representation .................................................. 149
   1.1. The separation between the authority and the authorisation/ mandate .................................. 149
   1.2. The form and features of this separation ....................................... 152
       1.2.1. Coming into existence ........................................ 152
       1.2.2. Ending of authority ........................................ 153
           1.2.2.1. General rule ........................................ 153
           1.2.2.2. Special rule in case of an obligation not to revoke .. 154
   1.3. Effect on the resulting relationship .................................. 154

2. New creditors and/or plurality of creditors ................................ 155
   2.1. Stipulation in favour of a third party .................................. 155
       2.1.1. Rules on the binding character and revocability in conformity with general contract law ........ 156
           2.1.1.1. Belgian law ........................................ 156
           2.1.1.2. DCFR ........................................ 157
       2.1.2. Effects in the resulting relationship (promisor – beneficiary) and defences .................................. 159
   2.2. Assignment .......................................................... 161
       2.2.1. Assignment as transfer of property ................................ 161
       2.2.2. Transfer of property v. substitution of creditor .................. 163
           2.2.2.1. Rules on consent of the debtor and on prohibition of assignment .................................. 164
           2.2.2.2. Substitution of creditor and protection of the debtor cessus .................................. 167
       2.2.3. Effect of substitution of creditor in the resulting relationship and defences .................................. 168
           2.2.3.1. Defences out of the provision relationship .......... 168
           2.2.3.2. Defences out of the valuta relationship ............ 172
   2.3. Appropriation of a right to performance by the principal in cases of indirect representation .................. 172
       2.3.1. Indirect representation in general ................................ 172
       2.3.2. When does the principal have a direct right against the third party? .................................. 173
       2.3.3. Effects of the take-over .................................. 175
   2.4. (Personal) subrogation ............................................... 176
       2.4.1. Cases of personal subrogation ................................ 177
       2.4.2. Effects of personal subrogation ................................ 178
   2.5. Real subrogation .................................................... 180
       2.5.1. Real subrogation leading to ownership of a right to performance .................................. 180
Contents

2.5.2. Real subrogation leading to a security right in a right to performance. 180
2.6. Granting a security interest in a right to performance.
2.6.1. Creation and effectiveness. 181
2.6.2. Effects in the internal relationship. 182

3. New debtors and/or plurality of debtors 184
3.1. Forms of plurality of debtors in general 184
3.1.1. Co-debtors liable for the same obligation 184
3.1.2. A debtor liable for a debt that is the debt of someone else 185
3.1.3. Two debtors each liable for a different obligation 186
3.2. Guarantee function and payment function 187
3.3. Classification of the internal relationship 188
3.4. Four basic types 189
3.4.1. “Dependent” obligations with a guarantee function 189
3.4.1.1. Dependent personal security 189
3.4.1.2. Incomplete substitution of debtor 191
3.4.2. “Independent” obligations with a guarantee function 192
3.4.3. “Dependent” obligations with a payment function 193
3.4.4. “Independent” obligations with a payment function 195
3.4.4.1. Independent delegation in general 195
3.4.4.2. Transfer of money 197

4. Some conclusions 199

C. Interpretation of contracts

The DCFR rules on contract interpretation: efficient defaults?
Robert Hardy 203

1. Introduction 203
2. Incomplete contracts and contract interpretation 204
2.1. Incomplete contracts 204
2.2. Incompleteness, interpretive issues and methods of interpretation 206
3. Economic consideration and interpretive strategies 208
3.1. Types of interpretive strategies 210
3.1.1. Majoritarian default rule 210
3.1.2. Hypothetical standard 211
3.1.3. Penalty default 212
3.1.4. Efficiency 213
4. Application to the DCFR rules on interpretation 214
5. Conclusion 217
PART IV. NON-CONTRACTUAL LIABILITY ARISING OUT OF DAMAGE CAUSED TO ANOTHER IN THE DCFR

Non-contractual liability arising out of damage caused to another in the DCFR
Reiner Schulze ............................................................ 221
1. Introduction ................................................................... 221
2. Topic and scope ............................................................ 222
3. Fundamental principles and structure .............................. 224
4. Some main provisions .................................................... 225
   4.1. Legally relevant damage ........................................... 225
   4.2. Accountability .......................................................... 226
   4.3. Causation ................................................................. 227
   4.4. Remedies ................................................................. 228
5. Conclusion ................................................................. 229

The draft tort rules of the DCFR: a Belgian law perspective
Ignace Claeys ............................................................... 231
1. The crucial concept of ‘legally relevant damage’ ............... 232
2. The frequent use of equity concepts .................................. 235
3. Reduction or elimination of liability .................................. 236
4. Topics left out .............................................................. 237
5. Room left for national diversity ........................................ 237
6. Damage interwoven with accountability ............................ 238
7. Different structure of strict liability rules ............................. 238
8. Conclusion ................................................................. 239

Tort law and the violation of statutory provisions
Wouter den Hollander .................................................... 241
1. Introduction ............................................................... 241
2. Statutory provisions and tort law ...................................... 242
3. The Dutch turn ............................................................ 246
4. A frame of reference ..................................................... 251
5. Evaluating Book VI of the DCFR ...................................... 252
6. Conclusion ................................................................. 259

PART V. PROPERTY LAW IN THE DCFR
A. General role of the DCFR in European property law

The role of the (D)CFR in the making of European property law
Bram Akkermans ........................................................ 265
1. Introduction ............................................................... 265
2. Contractual aspects of property law in the DCFR: indirect property law and a new type of Trennungsprinzip? ......................... 267
3. Property law in the DCFR: direct making of European property law .......................... 275
4. European Union property law in development ......................................................... 282
5. Conclusion: the making of European property law ..................................................... 286

Property law accessories under the DCFR
Koen Swinnen .............................................................................................................. 289
1. Introduction .............................................................................................................. 289
2. 'The definition of 'an accessory' in Article IX.–1:201(2) DCFR .................................. 290
   2.1. Introduction .......................................................................................................... 290
   2.2. 'The meaning of the word 'part' in the definition ................................................. 292
   2.3. Conclusion ........................................................................................................... 295
3. Legal comparative analysis of the definition .............................................................. 297
   3.1. Belgian law and French law .................................................................................. 297
   3.2. English law .......................................................................................................... 299
4. Conclusion .................................................................................................................. 301

B. Security rights in movables in the DCFR

Security rights in movables in the DCFR: general presentation
Anna Veneziano .............................................................................................................. 305
1. Introduction .............................................................................................................. 305
2. Overview of the DCFR proposals and most important policy choices ..................... 306
3. Enforcement of creditor's rights ................................................................................ 308
4. Treatment of "acquisition finance devices" ............................................................... 309
5. Conclusive remarks .................................................................................................. 312

Security rights in the DCFR from a Belgian perspective
Eric Dirix ....................................................................................................................... 313
1. Introduction .............................................................................................................. 313
2. Features of the Belgian system .................................................................................. 313
3. Objectives of reform in Belgium ............................................................................... 315
4. The non-possessory pledge ....................................................................................... 316

C. Transfer of movables in the DCFR

Book VIII DCFR on acquisition and loss of ownership of goods
Wolfgang Faber ............................................................................................................. 323
1. Introduction .............................................................................................................. 323
2. Scope and definitions ............................................................................................... 324
3. Derivative transfer of ownership ............................................................................. 327
   3.1. 'Causal' versus 'abstract' approach ................................................................... 327
   3.2. No separate 'real agreement' required ............................................................... 329
3.3. Transfer upon delivery versus transfer upon conclusion of the underlying contract 331
3.4. Selected further content of Chapter 2 335
4. Good faith acquisition from a non-owner 337
5. Acquisition by continuous possession 338
6. Production, combination and commingling 339
7. Protection of ownership and possession 341
8. Consequential questions on restitution of goods 341

Acquisition of ownership of goods in the DCFR: a Belgian perspective
Vincent Sagaert and Julie Del Corral 343
1. Introduction 343
2. Title-based transfer of ownership 344
2.1. Definitions 344
2.2. Requirements for the transfer of ownership 345
2.2.1. Valid title to the transfer of ownership 346
2.2.1.1. General observations on the Belgian transfer system 346
2.2.1.2. Draft Common Frame of Reference 348
2.2.2. Delivery requirement 349
2.2.2.1. General observations on the Belgian transfer system 349
2.2.2.2. Draft Common Frame of Reference 355
2.3. Effects 359
2.3.1. Risk for loss due to ‘vis maior’ 359
2.3.1.1. General observations on the Belgian transfer system 359
2.3.1.2. Draft Common Frame of Reference 360
2.3.2. Risk of insolvency 361
2.3.2.1. General observations on the Belgian transfer system 361
2.3.2.2. Draft Common Frame of Reference 364
2.4. Specific constellations 364
2.4.1. Transfer of generic and future goods 364
2.4.1.1. General observations on the Belgian transfer system 364
2.4.1.2. Draft Common Frame of Reference 366
2.4.2. Multiple transfers 367
2.4.2.1. General observations on the Belgian transfer system 367
2.4.2.2. Draft Common Frame of Reference 368
3. Good faith acquisition 370
3.1. Similarities between Belgian law and the DCFR 371
3.2. Differences between the DCFR and Belgian law 372
## Contents

4. Production, Combination and Commingling ........................................... 373  
   4.1. Introduction and party autonomy ................................................. 373  
   4.2. Production (’specificatio’) ..................................................... 375  
   4.3. Combination of goods (’accessio’ between movables) ...................... 377  
   4.4. Commingling of goods (’commixtio’ or ’confusio’) ....................... 379  
5. Conclusion ..................................................................................... 381  

PART VI. SPECIFIC CONTRACTS IN THE DCFR

A. Commercial agency, franchise and distributorship in the DCFR

Commercial agency, franchise and distributorship in the DCFR  
Odavia Bueno Díaz ................................................................. 387  
1. Introduction .................................................................................. 387  
2. The DCFR on commercial agency, franchise and distributorship ........... 388  
   2.1. Preliminary issues: sources, methodology, main underlying values  
        and policies ............................................................... 388  
   2.1.1. Sources and methodology ................................................. 388  
   2.1.2. Main underlying values and policies .................................... 389  
   2.1.2.1. Freedom of contract and efficiency ................................. 389  
   2.1.2.2. Protection of the weak party and of mutual  
            cooperation ............................................................ 390  
   2.1.2.3. Balance of particular interests and protection of  
            the business reputation (win-win situations) ............ 391  
   2.2. Model rules for commercial agency, franchise and distributorship .... 392  
   2.2.1. General provisions .......................................................... 392  
   2.2.1.1. Ratio legis ............................................................ 392  
   2.2.1.2. Model rules ........................................................... 392  
   2.2.2. Specific provisions on commercial agency: Chapter 3 Part E ...... 397  
   2.2.2.1. Ratio legis ............................................................ 397  
   2.2.2.2. Model rules ........................................................... 398  
   2.2.3. Specific provisions on franchise: Chapter 4 Part E .................. 403  
   2.2.3.1. Ratio legis ............................................................ 403  
   2.2.3.2. Model rules ........................................................... 404  
   2.2.4. Specific provisions on distributorship: Chapter 5 Part E ............ 408  
   2.2.4.1. Ratio legis ............................................................ 408  
   2.2.4.2. Model rules ........................................................... 409  
3. From the PEL CAFDC to the DCFR: academic incoherence .................. 411  
   3.1. From mandatory to default ...................................................... 412  
   3.2. Framework distributorship also subject to specific regulation ........ 412  
   3.3. A coherent explanation of the academic choices needed ............... 413  
4. Conclusion ..................................................................................... 415
Commercial agency, franchise and distribution contracts in the DCFR: perspectives from the Belgian law on agency, franchise and distributorship

Evelyne Terryn and Pieterjan Naeyaert

1. Introduction .................................................. 417
2. Legal framework for commercial intermediaries in Belgium ......... 417
   2.1. The notion commercial intermediaries .......................... 417
   2.2. Legal framework ............................................. 418
      2.2.1. Commercial agents ........................................ 418
      2.2.2. Distributors .............................................. 419
      2.2.3. Franchisees ............................................... 419
      2.2.4. Commission agents ....................................... 420
      2.2.5. Brokers .................................................. 421
3. Analysis of the DCFR from a Belgian perspective .................. 421
   3.1. Introduction ................................................ 421
   3.2. Scope of the general provisions .............................. 422
   3.3. Rules applying to all contracts within the scope of this part .... 424
      3.3.1. Introduction ............................................. 424
      3.3.2. Pre-contractual .......................................... 424
         3.3.2.1. General evaluation ................................. 424
         3.3.2.2. Evaluation from a Belgian perspective ............. 425
      3.3.3. Obligations of the parties ................................ 426
         3.3.3.1. Cooperation ......................................... 426
         3.3.3.2. Confidentiality ..................................... 427
      3.3.4. Termination of contractual relationship ................... 430
         3.3.4.1. Contracts for a definite period ...................... 430
         3.3.4.2. Contracts for an indefinite period ................. 432
         3.3.4.3. Damages for termination with inadequate notice .... 436
         3.3.4.4. Termination for non-performance .................... 437
         3.3.4.5. Indemnity for goodwill .............................. 439
         3.3.4.6. Stock, spare parts and materials .................... 440
   3.4. Agency .................................................... 442
      3.4.1. Scope .................................................. 442
         3.4.1.1. Definition ........................................... 442
         3.4.1.2. Mixed contracts ..................................... 444
      3.5. Franchise .................................................. 445
         3.5.1. Scope .................................................. 445
         3.5.2. Evaluation ............................................. 446
      3.6. Distributorship ............................................ 449
         3.6.1. Scope .................................................. 449
         3.6.2. Obligations of the supplier and the distributor ........ 449
         3.6.3. Relation to competition law ............................ 450
4. Conclusion ..................................................... 450
B. Sales agreements

Sales law in the DCFR

Marco B.M. Loos .................................................. 453

1. Introduction .............................................. 453
2. Scope of the provisions of Book IV.A DCFR ................. 454
   2.1. Substantive scope ...................................... 454
   2.2. Personal scope ........................................ 457
3. The main obligations of the parties and the passing of risk ...... 461
   3.1. Overview of the main obligations under the sales contract ... 461
   3.2. Transfer of ownership .................................. 462
   3.3. Transfer of documents .................................. 463
   3.4. Delivery ................................................ 465
   3.5. Passing of risk ........................................ 467
4. Conformity and non-conformity ................................ 470
   4.1. Introduction ......................................... 470
   4.2. Time for establishing (non-)conformity ..................... 471
   4.3. The notion of non-conformity ............................ 473
   4.4. Liability of the seller for third party statements .......... 474
   4.5. Third party claims .................................... 475
5. The duty to notify and the period of liability .................... 476
6. Partial and excess delivery .................................. 480
7. Remedies for non-conformity ................................ 481
   7.1. General remedial scheme ............................... 481
   7.2. The seller’s right to cure ................................ 483
   7.3. Specific rules on remedies for non-conformity ............. 484
8. Summary of the main findings and concluding remarks ............ 487

Optional European contract law as a means to adjust our fragmented domestic sales law

Bernard Tilleman and Willem Swinnen .......................... 491