Finding the Law and Harmonisation of Private Law in Europe*

by Ewoud Hondius

1. Introduction

This paper is about finding the law, especially civil law, in Europe in the new millennium. In the past decades, EC Directives have led to the introduction of more and more harmonised civil law at a European level. This subject has been dealt with in other papers for this conference. A recent publication[1] draws the conclusion that a European civil code may still be a long way ahead, but that it is not to be excluded altogether. It therefore seems appropriate to contemplate the elaboration of a code or restatement, which may at least provide a framework for Directive yet to come. Such 'pre-code' may for instance serve to make Directive compatible with one another. Perhaps even more important is the contribution which an exchange of ideas may make towards elaborating a new international set of concepts and norms of civil law[2].

---

* Work in progress. This papers builds heavily on a contribution to a *Festschrift*, still to be published. In turn, it will serve other purposes in the future.

1 *A. S. Hartkamp et al.* (Hg.), Towards a European Civil Code, 2. Auflage, 1998.

2 *O. Remien*, Europäische Rechtswissenschaft - Voraussetzung oder Folge europäischer Rechtsangleichung, in: K.J. Hopt (Hg.), Europäische Integration als Herausforderung des Rechts: Mehr Marktrecht - weniger Einzelgesetze, Veröffentlichungen der Hanns Martin Schleyer-Stiftung 12, Nr. 32, 1990, S. 124, 131: "europäische Rechtswissenschaft sollte nicht bloße Folge europäischer Rechtsangleichung sein, sondern ist im Grunde ihre Voraussetzung"; *H. Kötz*, Neue Aufgaben der Rechtsvergleichung, Juristische Blätter 1982, 355, 361, had already developed this theme much earlier. In his paper Legal Education in the Future: Towards a European Law School?, in: Bruno de Witte and Caroline Forder (Hg.), The common law of Europe and the future of legal education/Le droit commun de l'Europe et l'avenir de l'enseignement juridique, 1992, S. 31, 41, Kötz argues that "[t]he aim of finding a European common core of legal principles (...) is simply to mark out areas of agreement and disagreement, to construct a European legal lingua franca that has concepts large enough to embrace legal institutions which are functionally comparable, to develop a truly common European legal literature and the beginnings of a European law school curriculum, and thus to lay the basis for a free and unrestricted flow of ideas among European lawyers that is perhaps more central to the idea of a common law than that of identity on points of substance".

Harmonisation of private law at a European level raises some major difficulties, but is not inconceivable. However, a word of caution is appropriate. Even when private law in the various Member States were to be completely unified, this would not necessarily mean that its application and interpretation would be the same all over the Union. There are some big hurdles to overcome, especially when one looks at the way judges find the law in these jurisdictions. This paper will look into these differences and into what one may learn from other countries when finding the law. It will more specifically look into what Dutch law may learn from other legal systems in the EU in this regard.

Before embarking upon this exercise, I have to restrict the importance of my own argument. Practice in the various member states is often closer than theory suggests. This idea is indeed at the basis of the 'Common Core of European Private Law' project. An amusing example of the difference between theory and practice may be taken from the debate as to the introduction of open or vague norms into the common law. This introduction, forced by European Union Directive, has been described as a legal irritant by one author[3], and is indeed viewed as such by most English lawyers. And yet, at the very same time, there is a British government agency, which is itself introducing such open or vague norms into British self-regulation. This is the Office of Fair Trading, which over the past years has taken action against unfair contract terms in trades and industries such as advertising, the air industry, beauty therapy, *bungee jumping*, computers, *credit cards,* double glazing, driving lessons, gambling halls, gas , hair dressers, mobile telephones, mortgages, parking lots, postal services, recreation, safety systems, soccer clubs, swimming pool subscriptions and travel[4]. Often the Office of Fair Trading succeeds in simplifying clauses by introducing open norms. A computer contract contained the following clause:

> „Force Majeure. Time shall not be the essence of the Contract and the Company shall not be liable for any delay in installation in the event of any strike, lock out, trade dispute, accident, fire, flood or any natural disaster or act of God or any contingency whatsoever beyond the reasonable control of the Company affecting the supply or installation of the Contract overleaf. Such suspension or cancellation shall not constitute a breach of Contract by the Company, nor will the purchaser be liable to claim for any loss or damage howsoever arising as a result of these circumstances".

3 *Gunther Teubner*, Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences, (1998) Modern Law Review, 11-32.

4 Bulletin "Unfair Contract Terms" 1997/4, S. 27-57, to be ordered free of charge from the Office of Fair Trading, P O Box 172, East Molesey KT8 0XW, England.

After negotiations with the Office, the clause was changed into: "*The Company will manufacture and install the items within a reasonable time*". And the clause "All claims for non delivery shall be deemed waived unless presented to the Seller within 7 days of delivery of each shipment. Modification to delivery schedules by the Purchaser must be received by the Seller 21 days prior to the requested shipping date" was turned into: "*All delivery dates are quoted in good faith*". Which demonstrates that the presumed British fear of open norms is not as widespread as we are made to believe.

However, in the following, I shall not discuss the many similarities, but rather the dissimilarities, not on the level of substantive law, but on the higher level of finding the law. Such dissimilarities may exist even as between close neighbours, such as the Netherlands, Belgium and Germany (No.2). They will be stronger once one crosses the English Channel (No. 3). They become really very large once we include Eastern Europe (No. 4). What may the Dutch learn from these papers? At least three methods of interpretation vie for the Dutch courts' sympathy: the EU community interpretation, constitutional interpretation, and comparative interpretation (No. 7). I shall conclude with some final remarks (No. 8).

2. The Netherlands, Belgium and Germany

At first sight, Belgium, Germany and the Netherlands appear to be very close where finding the law is concerned. Belgium, Luxembourg and the Netherlands constituted the Benelux, which after World War II served as a model for the later European Union. Private law in Belgium and especially the Netherlands has always been influenced by German doctrine.

But there is a major difference between the Netherlands on the one hand, and Belgium and Germany on the other. The latter two countries are very familiar with judicial review of the civil code. It is true that in the Netherlands the constitutional question in finding the law is not unknown[5]. But in case law, the development is not very pronounced, as opposed to that in the other two countries, which both have a constitutional court.

5 *T. Koopmans*, De constitutionele kant van de rechtsvinding, in: E.S.G.N.A.I. van de Griend/B.W.N. de Waard (Hg.), Rechtsvinding/Gedachtenwisseling over het nieuwe Algemeen Deel van de Asserserie (Asser-Vranken), 1996, S. 1-8.

In this regard, there is a similarity between the Netherlands and the United Kingdom, where constitutional arguments also are of little importance. Is finding the law in the Netherlands therefore comparable to that in the United Kingdom? Everyone, perhaps with the exception of Zimmermann, is convinced that there is a world of difference between these two legal systems[6]. This may be illustrated by the case of *Walford v. Miles*, to be quoted below.

3. Common and civil law

Sometimes, a case which is handed down by a supreme court immediately catches everyone's attention. This is the case with *Kleinwort Benson Ltd. v. Lincoln City Council*. In this decision dealing with swaps, handed down on October 29, 1998[7], the British House of Lords has decided a number of important issues. Perhaps the most interesting of these concerns the retroactive effect of case law. On this issue, the most important judgement is the speech of Lord Goff:

"When a judge decides a case which comes before him, he does so on the basis of what he understands the law to be. This he discovers from the applicable statutes, if any, and from precedents drawn from reports of previous judicial decisions. Nowadays, he derives much assistance from academic writings in interpreting statutes and, more especially, the effect of reported cases; and he has regard, where appropriate, to decisions of judges in other jurisdictions. In the course of deciding the case before him he may, on occasion, develop the common law in the perceived interests of justice, though as a general rule he does this "only interstitially" (...).

Occasionally, a judicial development of the law will be of a more radical nature, constituting a departure, even a major departure, from what has previously been considered to be established principle, and leading to a realignment of subsidiary principles within that branch of the law. (...) It is into this category that the present case falls; but it must nevertheless be seen as a development of the law, and treated as such.

Bearing these matters in mind, the law which the judge then states to be applicable to the case before him is the law which, as so developed, is perceived by him as applying not only to the case before him, but to all other comparable cases, as a congruent part of the

6 See the special issue Anglo-Amerikaans recht, Ars Aequi 1998, 353-535.

7 And reported in (1998) 3 Weekly Law Reports (WLR) 1095.

body of law. Moreover when he states the applicable principles of law, the judge is declaring these as constituting the law relevant to his decision. Subject to consideration by appellate tribunals, and (within limits) by judges of equal jurisdiction, what he states to be the law will, generally speaking, be applicable not only to the case before him but, as part of the common law, to other comparable cases which come before the courts, whenever the events which are the subject of those cases in fact occurred".

The case of *Walford v Miles*[8] concerned the question whether or not a person who engages in negotiations may be held liable for calling off the negotiations. Most, if not all continental European countries answer this question in the affirmative. Not so England, where Lord Ackner, speaking in the House of Lords, uttered the sentence quoted above. These words are often quoted to demonstrate the big difference between common law and civil law. Correctly so, but for a wrong reason. What we may not deduce from Lord Ackner's words, is that under no circumstances shall English courts allow pre-contractual liability. Everything is dependent upon the facts of the case. The precedent setting value of *Walford v. Miles* is restricted to the facts of this particular case. In other cases, although it may at present seem unlikely, English courts may adopt other rules under other circumstances.

But in the very fact that the difference between the two jurisdictions may be smaller than one expected at first sight, lies a difference on the level of finding the law which may be of even bigger importance. A restriction of a court's holding to the facts of the case is particular for the common law system; on the continent, there is no such restriction - and therefore the inclination to do the same with common law cases. So paradoxically, a court decision has more value on the continent, to the extent that it is considered to be binding in any case, no matter what the facts are.

So we find that there is, after all, a fundamental difference between common and civil law, not on the substantive level, but on that of the importance of precedent. Basically, when we speak of civil law, we have in mind the European continent. But now the question should be raised: does Russia, do the other former Soviet republics, does the East share this interest in case law of the supreme courts?

8 (1992) 2 WLR 174.

4. East and West

Finally, I would like to mention the big difference between Western Europe on the one hand and Central and Eastern Europe, the former socialist republics, on the other. In my own university, we nowadays receive many students from Albania, the Czech Republic, Hungary, Kosovo, Poland, Slovakia and Ukraine for a six to twelve month period. When these students have to hand in papers, they often do not mention any case law. Why not? Because under their system they have been taught that case law only illustrates how legislation functions. This in fact is a correct interpretation of how judges saw their own function under socialist rule. They would closely follow the Party and as *bouche de la loi (rouge)* should not show too much initiative. In the present time of re-codification of Central and East European Law, this causes some problems for us. Western codes nowadays often contain open, or vague norms, which are in need of being filled in by the courts. And the ways in which courts do so, should be reported in law reports, in order for other courts as well as litigants to know what is happening. Such a tradition is absent at present, and there we have a weakness in the export of West European law to Central and Eastern Europe.

Having discussed some of the dissimilarities as to finding the law in Europe, we now arrive at a moment to discuss some methods in finding the law, which at present are not converging, but could be developed on short notice to do so. These are: European community law (No. 5), the constitutional argument (No. 6), and the comparative argument (No. 7).

5. European community law

In 1960, some 300,000 Dutch citizens suffered from an itching disease. After some time, it became highly likely that the disease was caused by a new margarine, which the large Anglo-British concern Unilever had brought on the market under the brand name of *Planta*. Maybe typically for the Netherlands, no judicial decision was ever arrived at in this case. Rather, the manufacturer set up a commission of three wise old men who were given the power to adjudicate claims. Most claims did not involve high sums of money. Now let us assume, for the sake of argument, that the claims would be brought under the present EC Directive – based Product Liability legislation. Just imagine that someone has suffered damages to the amount of Hfl. 2,000. According to Article 6:190 paragraph 1 sub b Burgerlijk Wetboek he may claim these damages "with a franchise of Hfl. 1263,85". Two questions will immediately arise. First, how did the legislator arrive at such a strange amount: why did he not opt for either Hfl. 1,000 or Hfl. 1,500. And secondly, what is a

'franchise'? The answer to the first question is simple: it is the value of 500 Ecu (the predecessor of the Euro). The second question is more difficult: what is a 'franchise'? Does it mean that once the sum of Hfl. 1,263.85 is surpassed, the victim will receive the full amount of his damages, or should the Hfl. 1,263.85 be deducted from the Hfl. 2,000. leaving him Hfl. 736.15? The Dutch language is not unequivocal on this point, nor is the English text. The French text: "sous déduction de", and the German text: "unter Selbstbeteiligung von" are perfectly clear, however, and there is much reason, taking into account the provision's legislative history, to award the consumer the lower amount. What has been the case? The civil servant with the Commission who drafted the provision was a German citizen, who wrote his texts - as was usual at that time - in French. The Dutch and English texts were made by the EU's translation office in Luxembourg. So why not place more weight on the French and German texts? Well, it is not that simple. In the first place, legislative history as an argument does not carry the same weight in all member states[9]. In the second place, all European languages are equal, according to EU law[10]. And in the third place, teleological interpretation has great importance on the European level[11]. And it is especially the teleological interpretation - looking for the purpose of the Directive - which may lead to a more consumer – friendly result. In Dutch legal writing, my conclusion is supported by Dommering-van Rongen[12], but not by Snijders[13] and Van Wassenaer[14]. Verkade c.s. consider both positions tenable and therefore - testimonium modestatis - do not give an opinion[15].

9 See Supreme Court, Practice Direction (Hansard: Citation), (1995) 1 WLR 192-193:
"3. Documents to be served. Any party intending to refer to any extract from Hansard in support of any such argument as is permitted by the decisions in *Pepper v. Hart* [1993] A.C. 593 and *Pickstone v. Freemans Plc.* [1989] A.C. 66 or otherwise must, unless the judge otherwise directs, serve upon all parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such extract".

10 *EuGH* 6.10.1982, Rs. 283/81 (*CILFIT/Ministerio della Sanità*), NJ 1983, 55.

11 See *Hans Kutscher*, as quoted by Stephen Weatherill; *Paul Beaumont*, EC Law, 2. Auflage, 1995, S. 172: "The literal and historic methods of interpretation recede into the background. Schematic and teleological interpretation ... is of primary importance".

12 Dommering/van Rongen, o.c., 262.

13 Snijders, o.c., 84.

14 Van Wassenaer, o.c., 60.

15 Verkade c.s., 94.

In countries outside the Netherlands this question is usually ignored because the language does not give rise to any doubts. France and Germany have such unequivocal texts, that the idea to consult the Dutch or English texts will simply not cross a lawyer's mind. And the United Kingdom, in transposing the Directive, has opted for a consumer friendly text, and few British writers will find that this text is different from that of the Directive.

What does this teach us with regard to finding the law? That distinctions on this point between the various jurisdictions are not very large, but also that small differences may lead to opposing results.

It also teaches us that with regard to interpretation, authentic national law and Europe-influenced national law should now be distinguished. Whenever a legislature opts for incorporation of a Directive in a national Code, it would therefore be wise to begin with a warning: "YOU ARE NOW ENTERING A ZONE OF EUROPEAN LAW".

6. The constitutional argument

The case, unfortunately, is well known in Western Europe. A man is in need of a loan. A bank is only willing to give the man a loan, when his wife, daughter, or other relative is willing to sign a contract of guarantee. The man then fails to pay back his loan and the bank enforces the obligation to secure the debt owed by the husband or father. In several jurisdictions, the courts have tried to curtail such 'sexually transmitted debts'. What is interesting is that in Germany, the incentive to do so has come from the Constitutional Court[16]. The civil law courts were in general reluctant to encroach upon freedom of contract, but not so the *Bundesverfassungsgericht*. This is an example of how constitutional arguments may play a bigger role in finding the law in Europe.

7. The use of comparative law by courts

An Englishman, following a family quarrel, had a will drawn up by his family solicitor, excluding his two daughters from his inheritance. When later the family relations were restored, the testator asked his solicitor to prepare a new will ensuring that his two daughters should receive £9,000 each. Although he had invoked the solicitor's help around mid-June, it was not until September 17, that an interview could be arranged, notwithstanding repeated attempt to arrange an earlier meeting. On September 13, the

16 See *Barclays Bank plc/O'Brien and another* [1993] 4 All ER 417; BVerfG, 19.10.1993, European Review of Private Law 1996, 263-286.

testator had a heart attack and he died without having altered his will. The frustrated daughters sued him for their lost legacies. After a lengthy and costly battle, they won their case: in the landmark case *White v. Jones*, the House of Lords ruled in favour of accepting the solicitor's liability[17]. What interests us in this regard, is that the House gave much consideration to arguments coming from German precedents. The British court did not follow the German precedents where the grounds for liability are concerned: instead of the German contractual basis (*culpa in contrahendo*), Lord Goff thought a delictual regime conformed better with the English legal system.

White v. Jones is an example of what Drobnig has called "voluntary recourse to foreign law"[18]. This may be distinguished from 'necessary comparison' in the case of general principles of law, conflict of laws, uniform legislation, European Union law, rules shared with other countries, maritime and air law, and extradition. Drobnig sadly concludes that voluntary recourse to comparative law in cases of a purely domestic character is very rare. But *White v. Jones* may be the beginning of a new era. Here also lies a task for academics, who by making foreign legal systems accessible to their own courts greatly advance the practice of using comparative arguments. In that particular case, the seminal book by Markesinis on German tort law has no doubt been of major importance. A new project like the Van Gerven *ius commune* books may pave the way for ever more comparative arguments.

8. Conclusion

The impact of European law on the development of private law will become more and more important in the imminent future. A number of Directives does already force member states to harmonise part of their contract and tort law. Other areas of private law will soon also be the object of harmonising efforts. Not always will the European Community use Directives as its sole instrument. Other instruments propagated include Treaties and Regulations. Private self-regulation is another source.

What is needed at present is a framework in which all these efforts can be placed. Such a framework could be established by a European civil code. As yet it is too early to even

17 White/Jones, [1995] 2 Weekly Law Reports 187; HL, European Review of Private Law 351-379 (1996).

18 *Ulrich Drobnig*, The use of comparative law by courts, in: K.D. Kerameus (Hg.), XIV Congrès international du droit comparé Athènes 1994/Rapports généraux, 1996, S. 65, 68.

consider adopting such a code. The notions and the practical solutions found within Europe are still very much apart and in some areas, such as formation of contract, appear to be diverging rather than converging.

Finding the law is also differently thought of. However, if a code is brought about which only aspires to serve as a set of principles of civil law, some practical difficulties seem to diminish. Such set of principles may also serve as a source of inspiration to both judges and academics[19]. Judges should play an important role, since it is only through case law that major areas of the civil law, such as that of corporeal securities, are formed. Academics are important, since they will have to contribute towards the circulation of ideas with regard to this development[20]. A similar conclusion is reached by Manfred Wolf with regard to the necessity of unification of civil procedure[21]. The new European challenge to lawyers in Europe seems to be taken up with enthusiasm in a number of countries.

Finding the law is sometimes called the core of legal education. Although this is perhaps slightly exaggerated, there is no doubt that it is an important subject. In my country, three authors have in the past set out to write a scholarly introduction to the subject. All three are at present in the course of being updated. One of the new elements, in my mind, should be that more and more legal education should focus on Europe rather than on national states.

19 *W. van Gerven*, Court decisions, general principles and legal concepts: ingredients of a common law of Europe, in: Bruno de Witte/Caroline Forder (Hg.), The common law of Europe and the future of legal education/Le droit commun de l'Europe et l'avenir de l'enseignement juridique, 1992, S. 339, 348.

20 Such circulation of ideas should in itself, apart from developments at a Community level, make a contribution towards the development of domestic private law. This has always been one of the main functions of comparative law.

21 *Manfred Wolf*, Abbau prozessualer Schranken im europäischen Binnenmarkt, in: Wege zu einem europäischen Zivilrecht/Tübinger Symposium zum 80. Geburtstag von Fritz Baur, 1992, S. 35, 67: "Eine Bestandsaufnahme der Prozessordnungen der europäischen Mitgliedstatten lässt erkennen, dass sie auf einer gemeinsamen rechtsstaatlichen Grundlage beruhen, (...). Trotz rechtsstaatlich gemeinsamer Grundlagen bestehen bei der Ausgestaltung im einzelnen manche Unterschiede. Diese Unterschiede, die zum Teil Ausdruck besonderer kultureller Anschauungen, Erfahrungen und sozialer Gepflogenheiten sind, müssen auch in der Europäischen Gemeinschaft nicht volkommen nivelliert werden. (...). Den prozessualen Verschiedenheiten sind in der Europäischen Gemeinscahft aber Grenzen gesetzt, soweit sie Handelsbeschränkungen und Wettbewerbsverzerrungen zur Folge haben. (...). Insoweit ist eine Anpassung an die Erfordernisse des Binnenmarkts geboten".

Is there such a thing as a common European way of finding the law? No, this is not the case. Even when judging only from the Netherlands, it is clear that there are differences with finding the law with the neighbouring Belgium and Germany, which both have installed constitutional review, as opposed to the Netherlands. The differences with the common law countries are even more conspicuous. At first sight, Holland and England are close in that neither of them has constitutional review. But then, a case such as *Walford v. Miles* discloses a channel of difference with regard to pre-contractual liability. A difference which upon closer inspection is smaller than expected. But as we have seen, the very fact that the substantive differences are smaller leads us to see that finding the law in the common and the civil law is much further apart than we may at first have imagined. May we speak of 'the' civil law? Major differences between East and West Europe demonstrate that here also lies a problem.

Still, it appears worthwhile to start thinking of new Euro-wide ways of finding the law. Using arguments gained from community law, broadening constitutional arguments and finally promoting comparative law may contribute to this new area of research.

9. Kurze Zusammenfassung in Deutsch

Die Bemühungen, ein europäisches Zivilrecht zu schaffen, sind in den letzten Jahren immer wichtiger geworden. Was oft übersehen wird, ist die Tatsache, daß die Auslegung des harmonisierten Rechts in den einzelnen Mitgliedstaaten völlig unterschiedlich ausfallen kann. Schon zwischen den Niederlanden, Belgien und Luxemburg gibt es in diesem Bereich große Unterschiede. So wird beispielsweise in den Niederlanden bislang auf die Prüfung der Verfassungsmäßigkeit verzichtet. Noch größere Unterschiede gibt es zwischen der Rechtsfortbildung im *civil law* und derjenigen im *common law*. Die größten Unterschiede treten jedoch bei einem Vergleich zwischen Ost und West zutage. Dieser Aufsatz beleuchtet drei - aus niederländischer Sicht - relativ neue Rechtsfortbildungsmethoden und schließt mit einer Bibliographie.

Bibliography

Armbrüster, Europäisierung des Schuldrechts? - zur Reform des deutschen Unmöglichkeitsrechts im Vergleich zum Code Civil, Juristische Arbeitsblätter (JA) 1991, 252-257.

Christian von Bar (HG.), Europäisches Gemeinschaftsrecht und Internationales Privatrecht, 1991.

Christian von Bar, Gemeineuropäisches Deliktsrecht, Band I, München 1996.

J.M. Barendrecht, Produktenaansprakelijkheid: Europees Burgerlijk Recht?, preadvies Vereniging voor burgerlijk recht, 1987.

J. Basedow (Hg.), Common Market Law Review 1997.

Beale, Towards a Law of Contract for Europe: the Work of the Commission on European Contract Law, in: Günter Weick (Hg.), National and European Law on the Threshold to the Single Market, S. 177-196.

Beale, The „Europeanisation" of Contract Law, in: R. Halson (Hg.), Exploring the Boundaries of Contract, 1996, S. 23-47.

Beitzke, Probleme der Privatrechtsangleichung in der Europäischen Wirtschaftsgemeinschaft, Zeitschrift für Rechtsvergleichung 1964, 80 ff.

J.P. Béraudo, Les principes d'Unidroit relatifs au droit du commerce international, JCP 1995, Doctrine 3842.

Berger, Die Unidroit-Prinzipien für Internationale Handelsverträge/Indiz für ein autonomes Weltwirtschaftsrecht?, Zeitschrift für Vergleichende Rechtswissenschaft 1995, 217-236.

Klaus Peter Berger, Formalisierte oder "schleichende" Kodifizierung des transnationalen Wirtschaftsrechts, 1996.

K. Boele-Woelki, Principles en IPR - Enkele beschouwingen over de toepassing van de UNIDROIT Principles of International Commercial Contracts en de Principles of European Contract Law, Diss., 1995.

Bonell, Unification of Law by Non-Legislative Means: The UNIDROIT Draft Principles for International Commercial Contracts, (1992) 40 American Journal of Comparative Law 617-633.

Bonell, Die UNIDROIT-Prinzipien der internationalen Handelsverträge: Eine neue Lex Mercatoria?, Zeitschrift für Rechtsvergleichung 1996, 152-157.

Bonell, The Unidroit Principles of International Commercial Contracts and the Principles of European Contract Law: Similar Rules for the Same Purposes?, (1996) Uniform Law Review, 229-246.

Bonell, The Unidroit Principles in practice: the experience of the first two years, (1997) Uniform Law Review, 30-41.

M.J. Bonell, An International Restatement of Contract Law/The UNIDROIT Principles of International Commercial Contracts, 2. Auflage, 1997.

Wilhelm Brauneder, Europäisches Privatrecht: historische Wirklichkeit oder zeitbedingter Wunsch an die Geschichte?, Roma: Centro di Studie e Sicerche di Diritto Comparato e Straniero 23, 1997.

J.J. Brinkhof, Europees octrooirecht, 1989.

Brownsword/Howells/Wilhelmsson, The EC Unfair Contract Terms Directive and Welfarism, in: Roger Brownsword/Geraint Howells/Thomas Wilhelmsson (Hg.), Welfarism in Contract Law, Aldershot 1994, S. 275-301.

Brownsword/Howells/Wilhelmsson, Between Market and Welfare: Some Reflections on Article 3 of the EC Directive on Unfair Terms in Consumer Contracts, in: Chris Willett (Hg.), Aspects of Fairness in Contract, 1996, S. 25-60.

Brüggemeier/Joerges, Europäisierung des Vertrags- und Haftungsrechts, in: P.C. Müller-Graff (Hg.), Gemeinsames Privatrecht in der Europäischen Gemeinschaft, 1993, S. 233-286.

Richard M. Buxbaum/Klaus J. Hopt, Integration Through Law/Europe and the American Federal Experience, Band 4, Legal Harmonization and the Business Enterprise, 1988.

Richard M. Buxbaum/Gérard Hertig/Alain Hirsch/Klaus J. Hopt (Hg.), European Business Law/Legal and Economic Analyses on Integration and Harmonization, 1991.

Mauro Cappelletti (Hg.), New Perspectives for a Common Law of Europe, 1978.

C. Castronovo, I 'Principi di diritto europeo dei contratti' e l'idea di codice, Rivista del diritto commerciale e del diritto generale delle obbligazioni, 1995, S. 1-38.

Helmut Coing, Europäisches Privatrecht, 1985/1989.

Coing, Europäisierung der Rechtswissenschaft, Neue Juristische Wochenschrift (NJW) 1990, 937-941.

Corporate Law/The European Dimension, papers given at the Bar European Group Conference Edinburgh 1991, London 1991.

Filip De Ly, Europese Gemeenschap en privaatrecht, Diss., 1993.

Erwin Deutsch, Aspekte für ein europäisches Haftungsrecht - Versuch einer kritischen, dogmatischen Bestandsaufnahme, Karlsruher Forum 1992.

Erwin Deutsch/Jochen Taupitz (Hg.), Haftung der Dienstleistungsberufe - natürliche Vielfalt und europäische Vereinheitlichung, 1993.

Drobnig, Ein Vertragsrecht für Europa, in: Festschrift für Ernst Steindorff, 1990, S. 1141 ff.

Drobnig, Substantive Validity, (1992) 40 American Journal of Comparative Law 635-643.

Ulrich Drobnig, Private Law in the European Union, Forum internationale No. 22, September 1996.

Van Erp, Europees privaatrecht in ontwikkeling?, in: Themis en Europa/Een opening van nieuwe grenzen?, 1989, S. 61-70.

Ferrari, Le champ d'application des „Principes pour les contrats commerciaux internationaux" élaborés par Unidroit, Revue internationale de droit comparé 1995, 985-993.

Flessner, Rechtsvereinheitlichung durch Rechtswissenschaft und Juristenausbildung, RabelsZ 1992, 243-260.

Fontaine, Content and Performance, 40 American Journal of Comparative Law 645-655 (1992).

Furmston, Breach of Contract, 40 American Journal of Comparative Law 671-674 (1992).

Gandolfi, Pour un code européen des contrats, Revue trimestrielle de droit civil 1992, 707-736.

Garro, Unification and Harmonization of Private Law in Latin America, (1992) 40 American Journal of Comparative Law 587-616.

Alejandro M. Garro, Armonización y Unificación del derecho privado en América Latina: esfuerzos, tendencias y realidades, 1992.

Ghestin, L'influence des directives communautaires sur le droit français de la responsabilité, in: Festschrift Werner Lorenz, Tübingen 1991.

Ghestin/Marchessaux-Van Melle, Les contrats d'adhésion et les clauses abusives en droit français et en droits européens, in: Jacques Ghestin/Marcel Fontaine (Hg.), La protection de la partie faible dans les rapports contractuels, 1996, S. 1-72.

Goode, International Restatement of Contract and English Contract Law, (1997) 2 *Uniform Law Review* 231-248.

Haazen, The principle of gross disparity en misbruik van omstandigheden, in: BW-krant Jaarboek 1995, 13-38.

Hartkamp, The Unidroit Principles for International Commercial Contracts and the New Dutch Civil Code, in: CJHB/Brunner-Bundel, 1994, S. 127-137.

Hartkamp, The Unidroit Principles for International Commercial Contracts and the United Nations Convention on Contracts for the International Sale of Goods, in: Comparability and Evaluation/Kokkini-bundel, 1994, S. 85-98.

Hauschka, Grundprobleme der Privatrechtsfortbildung durch die Europäische Wirtschaftsgemeinschaft, Juristen Zeitung (JZ) 1990, 290-299.

Hecke, Intégration économique et unfication du droit privé, in: De Conflictu Legum/Kollewijn-bundel, 1962, S. 198-208.

Hesselink, De goede trouw bij de uitvoering van de overeenkomst in het Franse recht, de Unidroit Principles en de Principles of European Contract Law, in: Europees privaatrecht 1995, S. 47-95.

Hoekstra, De Unidroit Principles of International Commercial Contracts en de Principles of European Contract Law: een vergelijking, Europees privaatrecht 1996, 3-43.

Hommelhoff, Zivilrecht unter dem Einfluß europäischer Rechtsangleichung, Archiv für die civilistische Praxis (AcP) 1992, 71 ff.

E.H. Hondius, Naar een Europees burgerlijk recht, Preadvies Vereniging voor Burgerlijk Recht en Nederlandse Vereniging voor Europees Recht, 1993.

Hondius, Protection of the Weak Party in Dutch Contract Law, in: Roger Brownsword/Howells/Wilhelmsson (Hg.), Welfarism in Contract Law, 1994, S. 253-274.

Huet, Propos amers sur la directive du 5 avril 1993 relative aux clauses abusives, La Semaine Juridique (JCP) 1994, 309.

Erik Jayme, Ein Internationales Privatrecht für Europa, 1991.

Kerameus, Procedural Unification: The Need and the Limitations, in: I.R. Scott (Hg.), International Perspectives on Civil Justice, Essays in honour of Sir Jack I.H. Jacob QC, 1990, S. 47-66.

Kessedjian, Un exercice de rénovation des sources du droit des contrats du commerce international: Les Principes proposés par l'Unidroit, Revue critique de droit international privé 1995, 641-670.

L.A.D. Keus, Europees privaatrecht/Een bonte lappendeken, preadvies Vereniging voor Burgerlijk Recht en Nederlandse Vereniging voor Europees Recht, 1993.

Irene Klauer, Die Europäisierung des Privatrechts/Der EuGH als Zivilrichter, 1998.

Harmen-Jan de Kluiver/Walter Van Gerven (Hg.), The European Private Company? Antwerpen etc.: Maklu, 1995.

Kötz, Gemeineuropäisches Zivilrecht, in: Festschrift Zweigert, 1981, S. 481-500.

Kötz, Was erwartet die Rechtsvergleichung von der Rechtsgeschichte?, Juristen Zeitung (JZ) 1992, 20-22.

Kötz, Alternativen zur legislatorischen Rechtsvergleichung, RabelsZ 1992, 215-242.

Hein Kötz/Axel Flessner, Europäisches Vertragsrecht I, 1996 (also published in English: Oxford: Clarendon Press, 1997).

Koopmans, The Birth Of European Law At The CrossRoads Of Legal Traditions, (1991) 39 American Journal of Comparative Law 493-507.

Kramer, Europäische Privatrechtsvereinheitlichung, Juristische Blätter 1988, 477-489.

Isabelle de Lamberterie/Georges Rouhette/Denis Tallon, Les principes du droit européen du contrat/L'exécution, l'inexécution et ses suites, Paris: La documentation Française 1997.

Lando, Principles of European Contract Law, in: Johan Erauw et al. (Hg.), Liber Memorialis François Laurent, 1989, S. 555-568.

Lando, Principles of European Contract Law/An Alternative or a Precursor of European Legislation, RabelsZ 1992, 261-273.

Ole Lando/Hugh Beale (Hg.), The Principles of European Contract Law, Band I: Performance, Non-Performance and Remedies, 1995.

Legrand, Against a European Civil Code, (1997) 60 Modern Law Review 44-63.

Levy, Contract Formation Under the UNIDROIT Principles of International Commercial Contracts, UCC, Restatement, and CISG, (1998) 30 Uniform Commercial Code Law Journal 249-332.

Nicolò Lipari (Hg.), Diritto privato europeo, 2 Bände, 1997.

J.H.A. Lokin/W.J. Zwalve, Hoofdstukken uit de Europese Codificatiegeschiedenis, Groningen 1986.

A.G. Lubbers/W. Westbroek (Hg.), Company Law in a European Perspective, 1993.

Lutter, Die Auslegung angeglichenen Rechts, JZ 1992, 593-607.

Mansel, Rechtsvergleichung und europäische Rechtseinheit, JZ 1991, 529-534.

Maskow, Hardship and Force Majeure, (1992) 40 American Journal of Comparative Law 657-669.

Massip, L'harmonisation du droit des personnes et de la famille: la contribution de la C.I.E.C., in: La Commission Internationale de l'Etat Civil, 1982, S. 15-30.

Luigi Mengoni, L'Europa dei codici o un codice per l'Europa?, Centro di Studie e Ricerche di Diritto Comparato e Straniero, Roma 1993.

Rudolf Meyer, Bona fides und lex mercatoria in der europäischen Rechtstradition, 1994.

Micklitz, AGB-Gesetz und die EG-Richtlinie über mißbräuchliche Vertragsklauseln in Verbraucherverträgen, Zeitschrift für Europäisches Privatrecht (ZEuP) 1993, 522-535.

Micklitz, Ein einheitliches Kaufrecht für Verbraucher in der EG?, Europäische Zeitschrift für Wirtschaftsrecht 1997, 229-237.

Peter-Christian Müller-Graff, Privatrecht und Europäisches Gemeinschaftsrecht/Gemeinschaftsprivatrecht, 2. Auflage, 1991.

Müller-Graff, Europäisches Gemeinschaftsrecht und Privatrecht, Neue Juristische Wochenschrift (NJW) 1993, 13-23.

Müller-Graff, Gemeinsames Privatrecht in der Europäischen Gemeinschaft: Ebenen und gemeinschaftsprivatrechtliche Grundfragen, in: Festschrift für Bodo Börner zum 70. Geburtstag, 1993, S. 303-343.

Projet de directive sur le rapprochement des lois et règles des Etats-Membres concernant certains aspects de la procédure civile, Rapport final (Storme Commission), 1992.

Prütting, Auf dem Weg zu einer Europäischen Zivilprozeßordnung/Dargestellt am Beispiel des Mahnverfahrens, in: Festschrift Baumgärtel, 1990, S. 457-469.

Reich, Garantien unter Gemeinschaftsrecht, Europäische Zeitschrift für Wirtschaftsrecht 1995, 71-77.

Norbert Reich, Europäisches Verbraucherrecht, 1996.

Remien, Ansätze für ein Europäisches Vertragsrecht, Zeitschrift für die Vergleichende Rechtswissenschaft 1988, 105-122.

Remien, Möglichkeit und Grenzen eines europäisches Privatrechts, in: Jahrbuch Junger Zivilrechtswissenschaftler 1991, S. 11-42.

Remien, Illusion und Realität eines europäischen Privatrechts, JZ 1992, 277-284.

Remien, Rechtseinheit ohne Einheitsgesetze?, RabelsZ 1992, 300-316.

Rittner, Das Gemeinschaftsprivatrecht und die europäische Integration, JZ 1995, 849-858.

H D C Roscam Abbing, Patiënt en gezondheidszorg in het recht van de Europese Gemeenschap, Proceedings Vereniging voor Gezondheidsrecht 1993.

Rosett, Unification, Harmonization, Restatement, Cidifucation, and Reform in International Commercial Law, (1992) 40 American Journal of Comparative Law 683-697.

Geoffrey Samuel/Jac Rinkes, Contractual and non-contractual obligations in English law, 1992.

J.G. Sauveplanne, Van verscheidenheid naar eenheid van privaatrecht, Koninklijke Nederlandse Akademie van Wetenschappen, Mededeling van de Afdeling Letterkunde, Nieuwe Reeks, 55 no 9, 1992.

Schlechtriem, Verbraucherkaufverträge - ein neuer Richtlinienentwurf, JZ 1997, 441-447.

Bruno Schmidlin (Hg.), Vers un droit privé européen commun?, 1994.

Schneider, Europäische und internationale Harmonisierung des Bankvertragsrechts/Zugleich ein Beitrag zur Angleichung des Privatrechts in der Europäischen Gemeinschaft, NJW 1991, 1985-1993.

Reiner Schulze, Die europäische Rechts- und Verfassungsgeschichte - zu den gemeinsamen Grundlagen europäischer Rechtskultur, 1991.

Schulze, European Legal History - A New Field of Research in Germany, (1992) 13 Journal of Legal History 270-295.

Jürgen Schwarze, European Administrative Law, 1992.

Smits, Een Europees privaatrecht als gemengd rechtsstelsel, NJB 1998, 61-66.

G.M.F. Snijders, De Europese dimensie van de pacht, Diss., 1993.

Steenhoff, Naar een Europees privaatrecht?, in: J.B.J.M. ten Berge et al. (Hg.), Recht als norm en als aspiratie, 1986, S. 85-101.

Peter Stein (Hg.), Il futuro codice europea cei contratti, 1993.

Ernst Steindorff, EG-Vertrag und Privatrecht, 1996.

Storme/Mansfield, Portalis of von Savigny? Overwegingen over de eenmaking van het recht in Europa i.h.b. via de vergelijkende rechtspraak, Tijdschrift voor Privaatrecht 1991, 849-887.

Tallon, Vers un droit européen du contrat?, in: Mélanges offerts à André Colomer, Paris 1992, S. 485-494.

Tallon, Damages, Exemption Clauses, and Penalties, 40 American Journal of Comparative Law 675-682 (1992).

Jochen Taupitz, Europäische Privatrechtsvereinheitlichung heute und morgen, 1993.

Teubner, Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences, (1998) Modern Law Review 11-32.

Tillmann, Zur Entwicklung eines europäischen Zivilrechts, in: Festschrift Oppenhoff zum 80. Geburtstag, 1985, S. 497-507.

Winfried Tillmann, Wirtschaftsrecht, 1986.

Tillmann, EG-Kodifikation des wirtschaftsnahen Zivilrechts, JZ 1991, 1023.

B.W.M. Trompenaars, Pluriforme unificatie en uniforme interpretatie, 1993.

Ulmer, Vom deutschen zum europäischen Privatrecht?, JZ 1992, 1-8.

Van der Velden, Europa 1992 en het eenvormig privaatrecht, in: D. Kokkini-Iatridou/F.W. Grosheide (Hg.), Eenvormig en vergelijkend privaatrecht 1990, 1990, S. 3-28.

Martin Vranken, Fundamentals of European Civil Law, 1997, 290 S.

B. Wachter, Elk volk krijgt het recht dat bij zijn aard past, farewell lecture, 1992.

A.J.O. van Wassenaer van Catwijck, Naar een Europees verkeersschaderecht, farewell lecture Vrije Universiteit, 1993.

Wege zu einem europäischen Zivilprozeßrecht/Tübinger Symposium zum 80. Geburtstag von Fritz Baur, 1992.

Wiegand, The Reception of American Law in Europe, (1991) 39 American Journal of Comparative Law 229-248.

Will, Autonome Rechtsangleichung in Europa, in: Fritz Schwind (Hg.), Österreichs Weg in die EG - Beiträge zur europäischen Rechtsentwicklung, 1991, S. 53-109.

Chris Willett (Hg.), Aspects of Fairness in Contract, 1996.

Bruno de Witte/Caroline Forder (Hg.), The common law of Europe and the future of legal education/Le droit commun de l'Europe et l'avenir de l'enseignement juridique, 1992.

Reinhard Zimmermann, The Law of Obligations/Roman Foundations of the Civilian Tradition, 1990.

Zimmermann, Das römisch-katholische ius commune als Grundlage europäischer Rechtseinheit, JZ 1992, 8-20.

Zimmermann, Konturen eines Europäischen Vertragsrechts, JZ 1995, 477-491.

Zwalve, De natie en de toekomst van haar codificatie, Nederlands Tijdschrift voor Burgerlijk Recht 1992, 92-97.

Konrad Zweigert/Hein Kötz, An Introduction to Comparative Law, 3. Auflage, 1998 (translated by T. Weir).