

Boilerplate Clauses, International Commercial Contracts and the Applicable Law

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- Christoffersen, Margrethe Buskerud, *Kjøp og salg av virksomhet* (Gyldendal Akademisk, 2008).
- Clarke, M., 'Notice of Contractual Terms' [1976] CLJ 51.
- Collins, Lawrence, Lord Justice, Morse, C. G. J., McClean, David, Briggs, Adrian, Harry, Jonathan and McLachlan, Campbell (eds.), *Dicey, Morris & Collins on the Conflict of Laws*, 14th edn, 2 vols. (Sweet & Maxwell, 2006).
- Commission of the European Communities, *European contract law and the revision of the acquis: the way forward*, COM (2004) 651 final.
- Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernisation*, 14.1.2003, COM (2002) 654 final.
- Comoglio, *Le prove civili* (Wolters Kluwer Italia, 1999).
- Coote, Brian, *Exception Clauses* (Sweet & Maxwell, 1964).
- Corbin, Arthur L., *Corbin on Contracts*, 15 vols., Joseph Perillo (ed.), (Matthew Bender and Company, 2002).
- Cordero-Moss, Giuditta, *Anglo-American Contract Models and Norwegian or other Civilian Governing Law*, Publications Series of the Institute of Private Law No. 169 (University of Oslo, 2007).
- 'Arbitration and Private International Law', *International Arbitration Law Review*, 11, 4 (2008), 153–164.
- 'Consumer Protection Except for Good Commercial Practice: A Satisfactory Regime for Commercial Contracts?', in Schulze, Reinar (ed.), *CFR and Existing EC Contract Law* (Sellier, 2009), pp. 63–92.
- 'The Function of Letters of Intent and their Recognition in Modern Legal Systems', in Schulze, R. (ed.), *New Features in Contract Law* (Sellier, 2007), pp. 139–159.
- 'Harmonized Contract Clauses in Different Business Cultures', in Wihelmsson, T., Paunio, E. and Pohjolainen, A. (eds.), *Private Law and The Main Cultures of Europe* (Kluwer International, 2007), pp. 221–239.
- 'International Arbitration and the Quest for the Applicable Law', *Global Jurist (Advances)*, 8, 3 (2008), Article 2, 1–42.
- International Commercial Law*, 2nd edn, Publications Series of the Institute of Private Law No. 185 (University of Oslo, 2010).
- 'International Contracts between Common Law and Civil Law: Is Non-state Law to be Preferred? The Difficulty of Interpreting Legal Standards such as Good Faith', *Global Jurist (Advances)*, 7, 1 (2007), 1–38.
- Lectures on Comparative Law*, Publications Series of the Institute of Private Law No. 166 (University of Oslo, 2004).
- Dahl, Børge, Melchior, T. and Tamm, D. (eds.), *Danish Law in a European Perspective*, 2nd edn (Thomson, 2002).
- Dahlman, Christian (ed.), *Festskrift till Ingemar Ståhl. Studier i rättsekonomi* (Studentlitteratur, 2005).

- Dainow, Joseph, 'The Civil Law and the Common Law: Some Points of Comparison', *American Journal of Comparative Law*, 15 (1967), 419–435.
- Dannemann, Gerhard, *Die ungewollte Diskriminierung in der internationalen Rechtsanwendung. Zur Anwendung, Berücksichtigung und Anpassung von Normen aus unterschiedlichen Rechtsordnungen* (Mohr Siebeck, 2004).
- 'Sachrechtliche Gründe für die Berücksichtigung nicht anwendbaren Rechts', in Hohloch, Gerhard, Frank, Rainer and Schlechtriem, Peter (eds.), *Festschrift für Hans Stoll zum 75. Geburtstag* (Mohr Siebeck, 2001), pp. 417–436.
- David, René and Brierly, John E. C., *Major Legal Systems in the World Today* (Stevens and Sons Publishing, 1985).
- De Nova, Giorgio, *Il contratto alieno*, 2nd edn (Giappichelli, 2010).
- DiMatteo, Larry A., 'An International Contract Law Formula: The Informality of International Business Transactions Plus the Internationalisation of Contract Law Equals Unexpected Contractual Liability', *Syracuse Journal of International Law and Commerce*, 23 (1997), 67–111.
- Eidenmüller, Horst, Faust, Florian, Grigoleit, Hans Christpoh, Jansen, Nils, Wagner, Gerhard and Zimmermann, Reinhard, 'The Common Frame of Reference for European Private Law – Policy Choices and Codification Problems', *Oxford Journal of Legal Studies*, 28, 4 (2008), 659–708.
- Eörsi, Gyula, *A polgári jogi kárterítési felelősségi kézikönyve* (Közgazdasági és Jogi Könyvkiadó, 1966).
- Elhatárolási problémák az anyagi felelősség körében* (Közgazdasági és Jogi Könyvkiadó, 1962).
- Ewald, Jens, *Retsmisbrug i formueretten* (København: Jurist- og Økonomforbundets Forlag, 2001).
- Ewald, William, 'What's So Special about American Law?', *Oklahoma City University Law Review*, 26 (2001), 1083–1115.
- Eyben, Bo von, Mortensen, Peter and Sørensen, Ivan, *Lærebog i Obligationsret II*, 3rd edn (Thomson Reuters, 2008).
- Farber, Daniel A., 'Book Review: The Hermeneutic Tourist: Statutory Interpretation in Comparative Perspective', *Cornell Law Review*, 81 (1996), 513–529.
- Farnsworth, E. Allan, *Farnsworth on Contracts*, 3 vols. (Aspen Publishers, 1998).
- Feingerts, Bruce L., Stein, Mark S. 'Exculpatory Provisions in Towage Contracts', *Tulane Law Review*, 49 (1975), 392.
- Fern, Martin D., *Warren's Forms of Agreements*, vol. 2 (LexisNexis, 2004)
- Filthaut, Werner, *Haftpflichtgesetz*, 6th edn (C. H. Beck, 2010).
- Flodgren, Boel, Gorton, Lars, Nyström, Birgitta and Samuelsson, Per (eds.), *Vänskrift till Axel Adlercreutz* (Juristförlaget i Lund, 2007).
- Földi, András *A jóhiszeműség és tisztelességezzel elve; intézménytörténeti vázlat a római jogtól napjainkig* (Publicationes Instituti Iuris Romani

- Budapestiensis fasc. 9, published by the Roman Law Department of ELTE Law Faculty, 2001).
- Fontaine, Marcel and De Ly, Filip, *La redazione dei contratti internazionali*, Italian translation by Renzo Maria Morresi (Giuffrè Editore, 2006).
- Freisen, Jeffery L., 'When Common Law Courts Interpret Civil Codes', *Wisconsin International Law Journal*, 15 (1996), 1.
- Gabrielli, Enrico (ed.), *I contratti in generale*, vol. II, 2nd edn (UTET, 2006).
- Garner, Bryan A. (ed.), *Black's Law Dictionary* (West Publishing, 1999).
- Gellért, György (ed.), *A Polgári Törvénykönyv Magyarázata* (Complex Kiadó, 2008).
- Giuliano, Mario and Lagarde, Paul, Report on the Convention on the law applicable to contractual obligations, OJ C 282, 31.10.1980.
- Glendon, M. A., Gordon, M. W. and Osakwe, C., *Comparative Legal Traditions* (West Publishing, 1994).
- Gomard, Bernhard, 'Aftalelovens §36 og erhvervskontrakter', *Erhvervsjuridisk Tidsskrift* (2008), 14–26.
- Obligasjonsret 2.Del*, 3rd edn (Jurist- og Økonomforbundets Forlag, 2003).
- Gomard, Bernhard and Iversen, Torsten, *Obligationsret 3.Del*, 2nd edn (Jurist- og Økonomforbundets Forlag, 2009).
- Gomard, Bernhard, Pedersen, Godsk, Viggo, Hans and Ørgaard, Anders, *Almindelig aftaleret*, 3rd edn (Jurist- og Økonomforbundets Forlag, 2009).
- Gomard, Bernhard and Rechnagel, Hardy, *International Købelov* (Jurist- og Økonomforbundets Forlag, 1990).
- Goode, Roy, 'Usage and its Reception in Transnational Commercial Law', 46, 1 (1997) *International and Comparative Law Quarterly*, 1–36.
- Goode, Roy, Kronke, Herbert, Kendrick, Ewan and Wool, Jeffrey, *Transnational Commercial Law – Text, Cases and Materials* (Oxford Univeristy Press, 2007).
- Gorton, Lars, 'Boilerplateklausuler', *Erhvervsjuridisk Tidsskrift* (2009), 170–188.
- Material Adverse Change-klausuler*, in Flodgren, Boel, Gorton, Lars, Nyström, Birgitta and Samuelsson, Per (eds.), *Vänskrift till Axel Adlercreutz* (Juristförlaget i Lund, 2007), pp. 117–132.
- 'Merger Clauses in Business Contracts', *Erhversretslig Tidsskrift* (2008), 344–360.
- Gorton, Lars and Samuelsson, Per, 'Kontraktuella viten', in Dahlman, Christian (ed.), *Festskrift till Ingemar Ståhl. Studier i rättsekonomi* (Studentlitteratur, 2005), pp. 75–106.
- Grassetti, Cesare, *L'interpretazione del negozio giuridico* (CEDAM, 1983).
- Grönfors, K., *Avtalsgrundande rättsfakta* (Thomson Fakta, 1993).
- Grosheide, Willem, 'The Duty to Deal Fairly in Commercial Contracts', in Grundmann, Stefan and Mazeaud, Denis (eds.), *General Clauses and Standards in European Contract Law* (Kluwer Law International, 2006), pp. 197–204.

- Gruber, Joachim 'Auslegungsprobleme bei fremdsprachigen Verträgen unter deutschem Recht', *Deutsche Zeitschrift für Wirtschafts- und Insolvenzrecht* (1997), 353–359.
- Gruber, Urs Peter, *Methoden des Internationalen Einheitsrechts* (Mohr Siebeck, 2004).
- Grundmann, Stefan and Mazeaud, Denis (eds.), *General Clauses and Standards in European Contract Law*, (Kluwer Law International, 2006).
- Guinchard Serge et al. (eds.), *Droit processuel*, 4th edn (Précis Dalloz, 2007).
- Gyevi-Tóth, Judit, 'A szerződéses és a deliktuális felelősséggé egymáshoz való viszonya', in A. Harmathy (ed.), *Jogi Tanulmányok* (ELTE, 1997), pp. 153–185.
- Hagstrøm, Viggo, *Kjøpsrett* (Universitetsforlaget, 2005).
- Obligasjonsrett* (Universitetsforlaget, 2003).
- 'The Scandinavian Law of Obligations', *Scandinavian Studies in Law*, 50 (2007), 113–124.
- Harmathy, Attila, *Felelősség a közreműködőért* (Közgazdasági és Jogi Könyvkiadó, 1974).
- Hartkamp, Arthur and Hesselink, Martijn (eds.), *Towards a European Civil Code* (Kluwer Law International, 1998).
- Hayek, Friedrich A., *Law, Legislation and Liberty*, vol. I, *Rules and Order* (University of Chicago Press, 1973).
- Heidel, Thomas, Hüsstege, Rainer, Mansel, Heinz-Peter and Noack, Ulrich (eds.), *Anwaltkommentar BGB*, vol. 1 (Deutscher Anwaltverlag, 2005).
- Hellner, Jan, 'Jämkning av långvarigt avtal', *Juridisk Tidskrift* (1994–1995), 137–141.
- 'The parol evidence rule och tolkningen av skriftliga avtal', in A. Agell (ed.), *Festskrift till Bertil Bengtsson* (Stockholm Nerenius & Santérus, 1993).
- Herbots, Jacques, 'Interpretation of Contracts', in Smits, Jan M. (ed.), *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing, 2006), pp. 325–347.
- Herre, Johnny and Ramberg, Jan, *Allmän köprätt*, 5th edn (Norstedts Juridik, 2009).
- Internationella köplagen (CISG). En kommentar*, 3rd edn (Juristförlaget, 2010).
- Hertz, Ketilbjørn and Lookofsky, Joseph, *EU-PIL. European Union Private International Law in Contract and Tort* (DJØF Publishing, 2009).
- Hesselink, Martijn, *The New European Private Law: Essays on the Future of Private Law* (Kluwer Law International, 2002).
- Hohloch, Gerhard, Frank, Rainer and Schlechtriem, Peter (eds.), *Festschrift für Hans Stoll zum 75. Geburtstag* (Mohr Siebeck, 2001).
- Holmes, Oliver Wendell, *The Common Law* (Little Brown, 1881).
- Honnold, John and Flechtner, Harry (eds.), *Uniform Law for International Sales under the 1980 United Nations Convention*, 4th edn (Kluwer Law International, 2009).
- Hov, Jo and Högberg, Alf Petter, *Alminnelig avtalerett* (Papinian, 2009).

- International Institute for the Unification of Private Law (UNIDROIT), *Principles of International Commercial Contracts* (International Institute for the Unification of Private Law, 2004), available at <http://www.unidroit.org/english/principles/contracts/principles2004/integralversionprinciples2004-e.pdf>, last accessed 6 October 2010.
- Iversen, Torsten, 'Produktansvar og ansvarsbegrænsningen', *Juristen*, 6 (2008), 188–193.
- Iversen, Torsten, 'Nogle bemærkninger om dagbøder', in Iversen, Torsten (ed.), *Festschrift til Det Danske Selskab for Byggeret* (Thomson Reuters, 2009), pp. 105–124.
- Jansen, Nils and Zimmermann, Reinhard, "A European Civil Code in All But Name": Discussing the Nature and Purposes of the Draft Common Frame of Reference' (2010) 69 *CLJ*, 98–112.
- Justitsministeriet, København, *Betænkning 1502/2008 om visse køberetlige regler om sikkerhedsmangler*.
- Kanashevskiy, V. A., *Foreign Economic Transactions: Substantive and Conflict of Laws Regulation* (Wolters Kluwer, 2008), pp. 165–166 (in Russian).
- Karayanni, Michael Mousa, 'The Public Policy Exception to the Enforcement of Forum Selection Clauses', *Duquesne Law Review*, 34 (1996), 1009.
- Kaufmann, Sebastian, *Parol Evidence Rule und Merger Clauses im internationalen Einheitsrecht* (Peter Lang, 2004).
- Kegel, Gerhard, Schurig, Klaus, *Internationales Privatrecht*, 9th edn (C. H. Beck, 2004).
- Kemenes, István, 'A gazdasági szerződések követelményei és az új Polgári Törvénykönyv', *Polgári Jogi Kodifikáció*, 1 (2001), 9–31.
- Kisfaludi, András, *Az adásvételi szerződés* (Közgazdasági és Jogi Könyvkiadó, 1999).
- 'Teljességi záradék', *Gazdasági és Jog*, 11 (1995), 3–7.
- Komarov, Alexander S., (ed.) *International Commercial Arbitration. Modern Problems and Solutions* (Statut Publishing House, 2007) (in Russian).
- (ed.), *Vienna Convention on Contracts for the International Sale of Goods. Practice of Application in Russia and Abroad* (Wolters Kluwer, 2007) (in Russian).
- Kritzed, Albert H., 'Pre-Contract Formation', editorial remark on the Internet database of the Institute of International Commercial Law of the Pace University School of Law, www.cisg.law.pace.edu/cisg/biblio/kritzer1.html, last accessed 6 October 2010.
- Kropholler, Jan, *Internationales Einheitsrecht* (J. C. B. Mohr, 1975).
- Kucher, A. N., *Theory and Practice of the Pre-Contractual Stage: The Legal Aspects* (Statut Publishing House, 2005).
- Lábady, Tamás, *A magyar magánjog (polgári jog) általános része*, 3rd edn (Dialóg Campus, 2002).

- Lando, Ole, 'CISG and its Followers: A Proposal to Adopt Some International Principles of Contract Law', *American Journal of Comparative Law*, 53 (2005), 379–401.
- Lando, Ole and Beale, Hugh (eds.), *Principles of European Contract Law, Parts I and II* (Kluwer Law International, 2002).
- (eds.), *Principles of European Contract Law, Part III* (Kluwer Law International, 2003).
- Langemark, Jesper and Jørgensen, Henrik, 'Regresafalter vedrørende produktansvar', *Ugeskrift for Retsvæsen*, B (1997), 65–69.
- Larenz, Karl and Wolf, Manfred, *Allgemeiner Teil des Bürgerlichen Rechts*, 9th edn (C. H. Beck, 2004).
- Lao Tzu, 'Tao Te Ching', in Emily Morrison Beck (ed.), *Bartlett's Familiar Quotations* (Little, Brown and Company, 1980)
- Le Tourneau, Philippe, *Juris-Classeur Civil App. Articles 1131–1133* (LexisNexis).
- Lego Andersen, Eigil, 'Hvorledes indgår erhvervslivet aftaler?', *Erhvervsjuridisk Tidskrift* (2008), 34–39.
- Légrádi, Gergely, 'Az utaló magatartás (biztatási kár) a Ptk.-ban és a bírói gyakorlatban', *Polgári Jogi Kodifikáció*, 4 (2003), 20–27.
- Legrand, Pierre, 'Against a European Civil Code', *Modern Law Review*, 60 (1997), 44. *Fragment on Law-as Culture* (W. E. J. Tjeen Willink, Schhordijk Institute, 1999).
- Lehrberg, Bert, *Förutsättningssläran* (Iustus, 1989).
- Leible, Stefan (ed.), *Das Grünbuch zum Internationalen Vertragsrecht* (Sellier, 2004).
- Lewison, Kim, *The Interpretation of Contracts*, 3rd edn (Sweet & Maxwell, 2007).
- Lookofsky, Joseph, 'Desperately Seeking Subsidiarity', in *Center for International & Comparative Law Occasional Papers vol. 1: The Annual Herbert L. Bernstein Memorial Lecture in Comparative Law. The First Six Years* (Durham, 2009), pp. 111–130, also available at www.law.duke.edu/ciclc/ciclops, last accessed 6 October 2010.
- Lookofsky, Joseph and Møgelvang-Hansen, Peter, 'Ny indenlandsk købelov: KBL III?', *Ugeskrift for Retsvæsen*, B (1999), 240–252.
- Lüderitz, *Auslegung von Rechtsgeschäften – Vergleichende Untersuchung anglo-amerikanischen und deutschen Rechts* (Karlsruhe, 1966).
- Lynge Andersen, Lennart and Madsen, Palle Bo, *Aftaler og Mellemmænd*, 5th edn (Thomson, 2006).
- Maggs, Peter B. and Zhiltsov, Alexei N. (eds. and translators into English), *The Civil Code of the Russian Federation*, parallel Russian and English texts (Norma Publishing House, 2003).
- Makovskiy, A. L., 'The Influence of the 1980 Vienna Convention on the Development of Russian Law', in Komarov, Alexander S. (ed.), *The Vienna Convention on Contracts for the International Sale of Goods*.

- Practice of Application in Russia and Abroad* (Wolters Kluwer, 2007), pp. 123–131 (in Russian).
- Mankowski, Peter, ‘Stillschweigende Rechtswahl und wählbares Recht’, in Leible, Stefan (ed.), *Das Grünbuch zum Internationalen Vertragsrecht* (Sellier, 2004), pp. 63–108.
- ‘Überlegungen zur sach- und interessengerechten Rechtswahl für Verträge des internationalen Wirtschaftsverkehrs’, *Recht der internationalen Wirtschaft* (2003), 2–14.
- Marston, G., ‘The Parol Evidence Rule: The Law Commission Speaks’ [1986] CLJ 192.
- Mattei, Ugo, Monti, Alberto, ‘Abstract: Comparative Law and Economics’ (1999), available at <http://encyclo.findlaw.com/0560book.pdf>, last accessed 6 October 2010.
- Maxeiner, James R., ‘Standard-Terms Contracting in the Global Electronic Age: European Alternatives’, *Yale Journal of International Law*, 28, 1 (2003), 141–156.
- Mazza, F., ‘Merger clause (o clausola di completezza)’, in Cendon, P. (ed.), *I contratti in generale*, vol. IV, *Clausole abusive* (UTET, 2001), pp. 725–755.
- McKendrick, Ewan (ed.), *Force Majeure and Frustration of Contract*, 2nd edn (Informa Publishing, 1995).
- McMeel, Gerard, *The Construction of Contracts: Interpretation, Implication and Rectification* (Oxford University Press, 2007).
- Menyhárd, Attila, ‘Protection of Legitimate Expectations in Hungarian Private Law’, in Fauvarques-Cosson, B. (ed.), *La Confiance Légitime et l'Estoppel* (Société de Législation Comparée, 2007), pp. 277–294.
- Merryman, John Henry, *The Civil Law Tradition* (Little, Brown and Company, 1985).
- The Loneliness of the Comparative Lawyer and Other Essays in Foreign and Comparative Law* (Kluwer Law International, 1999).
- Meyer, Olaf, ‘Die privatautonome Abbedingung der vorvertraglichen Abreden – Integrationsklauseln im internationalen Wirtschaftsverkehr’, *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, 72 (2008), 562–600.
- Mitchell, Andrew D., ‘Good Faith in WTO Dispute Settlement’, *Melbourne Journal of International Law*, 7 (2006), 339–373.
- Mitchell, Catherine, *Interpretation of Contracts* (Routledge-Cavendish, 2007).
- Møgelvang-Hansen, Peter, ‘Contracts and Sales in Denmark’, in Dahl, Børge, Melchior, T. and Tamm, D. (eds.), *Danish Law in a European Perspective*, 2nd edn (Thomson, 2002), pp. 237–276.
- Monateri, Pier Giuseppe, ‘Lex Mercatoria e competizione fra ordinamenti’, *Rivista di Sociologia del Diritto*, 2, 3 (2005), 229–240.
- Moss, Giuditta Cordero – see Cordero-Moss, Giuditta
- Münchener Kommentar zum Bürgerlichen Gesetzbuch*, vol. 1/1, 5th edn (C. H. Beck, 2010).

- Münzer, Cornelia, *Handeln unter falschem Recht* (Peter Lang, 1992).
- Mustill, Lord Justice, 'The New Lex Mercatoria: The First Twenty-Five Years', *Arbitration International*, 4, 2 (1987), 86–119.
- Nicola, Fernanda, 'Book Review: *The Enforceability of Promises in European Contract Law* (ed. by James Gordley)', *Harvard International Law Journal*, 44 (2003), 597.
- Nørager-Nielsen, Jacob, Theilgaard, Søren, Bjerg Hansen, Michael and Hørmann Pallesen, Martin, *Købeloven*, 3rd edn (Thomson, 2008).
- Nottage, Luke, 'Comment on Civil Law and Common Law: Two Different Paths Leading to the Same Goal', *Victoria University of Wellington Law Review*, 32 (2001), 843–851.
- Olsen, Lena, *Ersättningsklausuler. Vite och andra avtalade klausuler vid kontraktsbrott* (Nerenius & Santérus, 1986).
- Palandt, BGB, 69th edn (C. H. Beck, 2010).
- Palmer, N. E., 'Negligence and Exclusion Clauses. Again' [1983] LMCLQ 557.
- Parks, Alex L. and Cattell, Edward V. Jr. (eds.), *The Law of Tug, Tow and Pilotage* (Schiffer Publishing, 1994).
- Pejovic, Caslav, 'Civil Law and Common Law: Two Different Paths Leading to the Same Goal', *Victoria University of Wellington Law Review*, 32 (2001), 817–842.
- Peel, Edwin, 'Agreements to Negotiate in Good Faith', in Burrows, Andrew and Peel, Edwin (eds.), *Contract Formation and Parties* (Oxford University Press, 2010).
- 'Whither *Contra Proferentem*', in Burrows, Andrew and Peel, Edwin (eds.), *Contract Terms* (Oxford University Press, 2007).
- Petrikk, Ferenc, *Szavatosság, jótállás és fogyasztóvédelem* (Közgazdasági és Jogi Könyvkiadó, 1995).
- Prausnitz, *The Standardisation of Commercial Contracts* (Sweet & Maxwell, 1937).
- Rainey, Simon, *The Law of Tug and Tow (and Allied Contracts)* (LLP, 2002).
- Ramberg, Christina and Ramberg, Jan, *Allmän avtalsrätt*, 8th edn (Norstedts Juridik, 2010).
- Ramberg, Jan, *INCOTERMS 2000*, ICC Publication No. 620 (1999).
- Reithmann, Christoph and Martiny, Dieter (eds.), *Internationales Vertragsrecht*, 6th edn (Verlag Dr. Otto Schmidt, 2004).
- Rogers, Cathrine A., 'Review Essay: Gulliver's Troubled Travels, or the Conundrum of Comparative Law', *George Washington Law Review*, 67 (1998), 149–190.
- Rogers, W. V. Horton, *Winfield & Jolowicz on Tort*, 17th edn (Sweet & Maxwell, 2006).
- Rozenberg, M. G., 'Application of the 1980 Vienna Convention in the Practice of the ICAC at the RF CCI', in Komarov, Alexander S. (ed.) *International Commercial Arbitration. Modern Problems and Solutions* (Statut Publishing House, 2007), pp. 336–340 (in Russian).

- International Sale of Goods. Commentary to Legal Regulation and Practice of Dispute Resolution*, 3rd edn (Statut Publishing House, 2006) (in Russian).
- (ed.), *The 1980 Vienna UN Convention on Contracts for the International Sale of Goods. The Ten Years of Application by Russia* (Statut Publishing House, 2002) (in Russian).
- Runesson, Eric M., 'Bidrag till frågan om existensen av en omförhandlingsplikt och dess innehåll', in Flodgren, Boel, Gorton, Lars, Nyström, Birgitta and Samuelsson, Per (eds.), *Vänskrift till Axel Adlercreutz* (Juristförlaget i Lund, 2007), pp. 451–462.
- Sacco, Rodolfo, 'Legal Formants: A Dynamic Approach to Comparative Law', *American Journal of Commercial Law*, 39 (1991), 1–34, 343–402.
- 'One Hundred Years of Comparative Law', *Tulane Law Review*, 75 (2001), 1159–1176.
- Sadikov, O.N., *Damages in the Civil Law of the Russian Federation* (Statut Publishing House, 2009) (in Russian).
- Saltorp, Bjørn and Werlauff, Erik, *Kontrakter*, 2nd edn (Jurist- og Økonomforbundets Forlag, 2009).
- Samuel, Geoffrey, *Law of Obligations and Legal Remedies*, 2nd edn (Cavendish Publishing, 2001).
- Samuelsson, Morten, 'Ansvarsfraskrivelse og produktansvar' *Forsikrings- og Erstatningsretlige Skrifter I:2000* (Forsikringshøjskolens Forlag, 2000).
- Sandsbraaten, T., *The Concepts of Conditions, Warranties and Covenants*, Publications Series of the Institute of Private Law No. 179 (University of Oslo, 2009).
- Schadbach, Kai, 'The Benefits of Comparative Law: A Continental European View', *Boston University International Law Journal*, 16 (1998), 331–422.
- Schans Christensen, Jan, *Grenseoverskridende virksomhedsoverdragelser. Tilrettelæggelse, Forhandling. Aftaleudarbejdelse og Opfølging* (GadJura, 1998).
- Schelhaas, Harriët, 'The Judicial Power to Reduce a Penalty', *Zeitschrift für Europäisches Privatrecht* (2004), 386–398.
- Schlechtriem, Peter, 'The Functions of General Clauses, Exemplified by Regarding Germanic Laws and Dutch Law', in Grundmann, Stefan and Mazeaud, Denis (eds.), *General Clauses and Standards in European Contract Law* (Kluwer Law International 2006), pp. 41–55.
- Schlechtriem, Peter and Schwenzer, Ingeborg (eds.) *Commentary on the UN Convention on the International Sale of Goods (CISG)*, 2nd edn (Oxford University Press, 2005).
- (eds.), *Kommentar zum Einheitlichen UN-Kaufrecht – CISG*, 5th edn (C. H. Beck, 2008).
- Schmidt-Kessel, Martin, 'Articles 8–9', in Schlechtriem, Peter and Schwenzer, Ingeborg (eds.), *Kommentar zum Einheitlichen UN-Kaufrecht – CISG*, 5th edn (C. H. Beck, 2008), pp. 163–197.

- Schmitthoff, Clive M., 'The Unification or Harmonisation of Law by Means of Standard Contracts and General Conditions', *International & Comparative Law Quarterly*, 17, 3 (1968), 551–570.
- Schulze, Reiner (ed.), *CFR and Existing EC Contract Law*, 2nd revised edn (Sellier 2009).
- (ed.), *New Features in Contract Law* (Sellier, 2007).
- Schwenzer, Ingeborg, 'Force Majeure and Hardship in International Sales Contracts', *Victoria University of Wellington Law Review*, 39 (2009), 709–725.
- Scognamiglio, Claudio, 'L'interpretazione', in Gabrielli, Enrico (ed.), *I contratti in generale*, vol. II, 2nd edn (UTET, 2006), pp. 1035–1146.
- Sellers, Mortimer, 'The Doctrine of Precedent in the United States of America', *American Journal of Comparative Law*, 54 (2006), 67–88.
- Simon, Denys, *Le système juridique communautaire*, 3rd edn (PUF, 2001), No. 335.
- Sjöman, Erik, 'Ett rättsfall om integrationsklausuler', *Svensk Juristtidning* (2008), 571–577.
- 'Integrationsklausulen och dispositiva rätt', *Juridisk Tidskrift* (2002–2003), 935–941.
- Skriveland, Fredrik, *No waiver-klausulen*, *Publications Series of the Institute of Private Law No. 176* (University of Oslo, 2009).
- Smits, Jan M., (ed.), *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing, 2006).
- Soubelet, Laurent, 'Le rôle conféré par le droit communautaire aux droits nationaux des États membres', *Chronique de droit européen*, III, Université de Paris Ouest Nanterre La Défense, *Les Petites Affiches*, 19 May 2003, No. 99.
- Spencer, J. R., 'Signature, Consent and the Rule in *L'Estrange v Graucob*' [1973] CLJ 104.
- Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen* (Sellier, 2003).
- Staughton, Sir C., 'How Do Courts Interpret Commercial Contracts?' [1999] CLJ 303.
- Stein, Peter G., 'Relationships among Roman law, Common Law, and Modern Civil Law: Roman Law, Common Law, and Civil Law', *Tulane Law Review*, 66 (1992), 1591–1603.
- Stolze, Lars and Svernlöv, Carl, 'Virksomhedsoverdragesskolen' (2005) *Revision & Regnskabsvæsen*, No. 1, 6–13, No. 4, 50–60, No. 5, 50–56.
- Study Group on a European Civil Code/Research Group on EC Private Law (eds.), *Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR)* (Sellier, 2009).
- Sweeney, Joseph C., 'Collisions Involving Tugs and Tows', *Tulane Law Review*, 70 (1995), 581.
- Tamasauskas, Andreas, *Erhvervslivets lånoptagelse* (Gjellerup, 2006).
- Teske, Wolfgang, *Schriftformklauseln in Allgemeinen Geschäftsbedingungen* (Hermanns, 1990).

- Trebilcock, M. J., 'The Doctrine of Inequality of Bargaining Power', *University of Toronto LJ*, 26 (1976), 359.
- Treitel, Guenter H. and Peel, Edwin, *The Law of Contract*, 12th edn (Sweet & Maxwell, 2007).
- Triebel, Volker and Balthasar Stephan, 'Auslegung englischsprachiger Vertragstexte unter deutschem Vertragsstatut – Fallstricke der Art. 31, 32 I Nr. 1 EGBGB', *Neue Juristische Wochenschrift* (2004), 2189–2196.
- Twigg-Flesner, Christian, *The Europeanization of Contract Law* (Routledge-Cavendish, 2008).
- Ulfbeck, Vibe, *Erstaningsretlige grænseområder. Professionsansvar, produktansvar og offentlige myndigheters erstatningsansver*, 2nd edn (Jurist- og Økonomforbundets Forlag, 2010).
- Ulmer, Peter, Brandner, Erich and Hensen, Horst-Diether, *AGB-Gesetz.: Kommentar zum Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen*, 9th edn (Verlag Dr. Otto Schmidt, 2001).
- The United Nations Secretariat's *Commentary to the UNCITRAL Draft Convention*, adopted at the United Nations Conference on Contracts for International Sale of Goods, Vienna, 10 March–11 April 1980 (A/CONF./97/5), available at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_travaux.html, last accessed 6 October 2010.
- Vékás Lajos (ed.), *Szakértői Javaslat az új Polgári Törvénykönyv tervezetéhez* (Complex Kiadó, 2008).
- Vogenauer, Stefan 'Auslegung von Verträgen', in Basedow, Jürgen, Hopt, Klaus and Zimmermann, Reinhard, (eds.), *Handwörterbuch des Europäischen Privatrechts* vol. 1 (Mohr Siebeck, 2009), pp. 134ff.
- Voß, Stefan, *Warranties in Unternehmenskaufverträgen – Struktur und Wirkungsweise anglo-amerikanischer Gewährleistungskataloge in Unternehmenskaufverträgen, die deutschem Recht unterliegen* (MVK, Medien-Verl. Köhler, 2002).
- Weick, Günter, 'Zur Auslegung von internationalen juristischen Texten', in Köbler, Gerhard, Heinze, Meinhard and Schapp, Jan (eds.), *Geschichtliche Rechtswissenschaft, Freundesgabe für Alfred Söllner zum 60. Geburtstag am 5.2.1990* (Giessener rechtswissenschaftliche Abhandlungen, 1990), pp. 607–628.
- Westermann, Harm Peter, *Erman, Bürgerliches Gesetzbuch*, 12th edn (Verlag Dr. Otto Schmidt, 2008).
- Westphalen, Graf von, *Vertragsrecht und AGB Klauselwerke* (C. H. Beck, 2003).
- Westly, Jens Christian, *No Oral Amendments klausler, Publications Series of the Institute of Private Law No. 178* (University of Oslo, 2009).
- Whittaker, Simon, 'Termination Clauses', in Burrows, Andrew and Peel, Edwin (eds.), *Contract Terms* (Oxford University Press, 2007).

- Wilburg, W., *Entwicklung eines beweglichen Systems im Bürgerlichen Recht* (Rede gehalten bei der Inauguration als Rector magnificus der Karl-Franzes Universität in Graz am 22 November 1950: 1950).
- Zusammenspiel der Kräfte im Aufbau des Schuldrechts* [163 AcP (1964)] 346–379.
- Wilhelmsson, Thomas, Paunio, Elina and Pohjolainen, Annika (eds.), *Private Law and the Main Cultures of Europe* (Kluwer Law International, 2007).
- Wolf, Manfred, Horn, Norbert and Lindacher, Walter (eds.), *AGB-Gesetz: Gesetz zur Regelung der Allgemeinen Geschäftsbedingungen*, 4th edn (C. H. Beck, 1999).
- Wurmnest, Wolfgang, ‘Die Mär von der mahr – Zur Qualifikation von Ansprüchen aus Brautgabevereinbarungen’, *Rabels Zeitschrift für Ausländisches und Internationales Privatrechts*, 71 (2007), 527–558.
- Yassari, Nadjma, ‘Die Brautgabe im iranischen Recht’, *Das Standesamt* (2003), 198–201.
- Yates, David and Hawkins, A. J., *Standard Business Contracts* (Sweet & Maxwell, 1986).
- Zakrzewski, Rafal, ‘The Nature of a Claim on an Indemnity’, *Journal of Contract Law*, 22 (2006), 54.
- Zimmermann, Reinhard and Whittaker, Simon, *Good Faith in European Contract Law* (Cambridge University Press, 2000).
- Zvekov, V. P., *Conflict of Laws in Private International Law* (Wolters Kluwer, 2007) (in Russian).
- Zweigert, Konrad and Kötz, Hein, *Introduction to Comparative Law*, translated by Tony Weir, 3rd edn (Oxford University Press, 1998).

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