European Contract Law

by

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Foreword

Contract law is at the centre of the development of European private law. Thirty years of European directives and CJEU jurisprudence have contributed to the growth of an extensive acquis communautaire with its innovative approaches and increasing influence on the laws of the Member States. Furthermore, drafts such as the Principles of European Contract Law and legislative projects such as the European Commission’s Proposal for a Common European Sales Law have also contributed to the conceptual development and structure of this new area of law. The development of European contract law requires contributions from jurists across Europe, therefore this volume intends to allow practitioners, students and scholars to participate in an ever growing, dynamic and highly interesting area of modern law. In order to do so the volume provides fundamental information about the content, methods and objectives of European legislation in the field of contract law and explains the interaction between the legislator, judges and academics during the creation of European contract law. It particularly attempts to show European contract law’s characteristics as supranational law as well as the innovative features vis-à-vis traditional concepts in contract law. Above all, the volume strives to guide jurists along an often unfamiliar path and to promote an understanding of the characteristics of a new legal development.

The focus on the features of this development as well as the resulting structures is all the more important as this volume has been published at a time of great uncertainty regarding the next legislative steps in European private law. The European Commission has announced that it will retract its Proposal for a Common European Sales Law and will instead take other measures; though as yet no light has been cast on the form or scope of these measures. It is however likely that future legislation will relate to issues on online trading and ‘digital contracts’. These recent developments may cause the reader to ask whether the Common European Sales Law’s key role in this volume on European contract law is now superfluous. However, this concern is unfounded as the volume was not conceived with the intention to illustrate the individual doctrinal features of European private law but rather to depict how the legal system is developing and the important contributions made by the various different legal sources. The emerging acquis communautaire is involved in a tense relationship with the laws of the Member States, the EU legislator, the EU courts as well as academic drafts – above all in the form of comprehensive proposals aiming at greater coherency in European contract law. The Common European Sales Law indeed reflected a new stage in the development of a European contract law, though similar comments also apply to proposals such as the Draft Common Frame of Reference, the ‘Acquis Principles’ and many others.

The volume attempts to show how a system arises from the dialogue between the different sources; in this respect it is not limited to current legislation. It
adopts a method employed by the ‘Acquis Group’ which seeks to use fragment-
ed European sources in order to create a system. The system is vastly different
from the legal systems of the Member States which, however, also influence the
development of a system of common European law. It will be seen from this
volume that the development has certainly been dynamic, yet its path has taken
many twists and turns. The Common European Sales Law will not vanish with-
out a trace as it will have long-term influence on the features of the European
legal landscape and will serve as a ‘reference’ for the future development of
European private law.

The volume is based on the many discussions between the authors and their
work together on a number of research projects. Its content and structure are
based on the German edition (Nomos, April 2015) though with several additions
(in particular on interpretation, change of circumstances, and an ‘outlook’) and
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