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# How European is European Private International Law?

*Sources, Court Practice, Academic Discourse*

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Jan von Hein, Eva-Maria Kieninger  
and Giesela Rühl (eds.)



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# European Private Lawsources

**Jan von Hein, Giesela Rühl, Eva-Maria  
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## European Private Lawsources:

European Private Law:Sources Jurgen Basedow,2000-12-21      **The Foundations of European Private Law** Roger Brownsword,Hans-W. Micklitz,Leone Niglia,Stephen Weatherill,2011-09-19 There remains an urgent need for a deeper discussion of the theoretical political and federal dimensions of the European codification project While much valuable work has already been undertaken the chapters in this volume take as their starting point the proposition that further reflection and critical thought will enhance the quality and efficacy of the on going work of the various codification bodies The volume contains chapters by representatives of the Common Frame of Reference the Study Group and the Acquis Group as well as by those who have not been involved in particular projects but who have previously commented more distantly on their work for instance those belonging to the Trento Group and the Social Justice Group The chapters between them represent the most comprehensive attempt so far to survey the state of the codification project its theoretical political and federal foundations and the future prospects for enforcement and compliance      *The Transformation of European Private Law* James Devenney,Mel Kenny,2013-10-24 A critical overview of the Europeanisation of private law at a watershed moment a point of punctuated equilibrium      How European is European Private International Law? Jan von Hein,Giesela Rühl,Eva-Maria Kieninger,2019 Over the course of the last few decades the European legislature has adopted a total of 18 Regulations in the area of private international law The question remains however if these efforts have turned private international law into a truly European field The book analyses for the first time how European private international law actually is      *The Many Concepts of Social Justice in European Private Law* H. W. Micklitz,2011-11-01 Does European regulatory private law offer a genuine model of justice for society Beyond its initial libertarian focus on economic integration through the market citizen might it now serve the social inclusion of the vulnerable In the wake of Hans Micklitz s inspired and relentless pursuit of meaning within the ongoing constitutionalization of private law relationships this rich collection explores the implications of new specifically European forms of access rights which ensure horizontally and vertically enforceable and non discriminatory opportunity for market participation Horatia Muir Watt Columbia Law School US This insightful book with contributions from leading international scholars examines the European model of social justice in private law that has developed over the 20th century The first set of articles is devoted to the relationship between corrective commutative procedural and social justice more particularly the role and function of commutative justice in contrast to social justice The second section brings together scholars who discuss the relationship between constitutional order the values enshrined in the constitutional order and the impact of constitutional values on private law relations The third section focuses on the impact of socio economic developments within the EU and within selected Member States on the proprietary order of the EU on the role and function of the emerging welfare state and the judiciary as well as on nation state specific patterns of social justice The final section tests the hypothesis to what extent patterns of social justice are context related and differ in between



labour consumer and competition law The Many Concepts of Social Justice in European Private Law will prove to be of great interest to academics of law as well as to private lawyers and European policymakers

**Pluralism and European Private Law** Leone Niglia, 2013-01-29 European private law has hitherto tended to be conceptualised firmly around ideas of unity and harmony Yet the discourse within other areas of European law notably constitutional law scholarship visibly adopts pluralist perspectives This book seeks to bridge the gap between public and private law by looking at European private law from various pluralist positions and by investigating old and new ways in which to understand legal pluralism in general It fills a gap in the wide literature on legal pluralism as the first book entirely dedicated to offering an insight into legal pluralism from the vantage point of the private law domain The book addresses critically issues such as what pluralism really means in private law and what conceptions of pluralism it embodies including discussion about the outer boundaries of any of the pluralist understandings Contributions address comparative critical historical theoretical and normative aspects The book provides an opportunity to engage innovatively with problematic conceptual issues which inform the work of European private law scholars including the debate on the Common Frame of Reference Project of the European Commission

*Structures of Civil and Procedural Law in Turkey* Ansay, Jürgen Basedow, 2011-01-01 Hauptbeschreibung This small book is a product of a seminar organised by the Koc University Law School Dr N. Sret Semahat Arsel Research Center of International Business Law and the Max Planck Institute for Comparative and International Private Law Hamburg held in Istanbul on some legal issues of South Eastern European countries Several scholars from five South Eastern European nations and Germany came together in March 2007 to discuss the basic legal structure on distribution of justice and contract law in their respective legal systems The aim of the conference was the presentation and

**The Making of European Private Law** J. M. Smits, 2002 The private law of the Member States of the European Union has become more and more European The fact that the European Union is making ever more use of directives as an instrument to achieve private law goals is in this context not the most important development Of much more substance is the fact that one increasingly realises that a uniform European private law has to be created in one way or another in the near future if a truly common European market is to function at all Over the last decade Europe has witnessed the emergence of a vigorous debate about the need for and the feasibility of a future European *ius commune* in the field of private law This book critically discusses this debate and provides a systematic overview of the various initiatives taken and describes the fragmentary European private law that already exists by way of European directives international conventions etc In addition the author aims at making a contribution to the debate by suggesting that the experience good or bad of the so called mixed legal systems is of great importance to the European private law venture and to the development of a uniform private law for Europe This idea is supported by insights from Law Economics and illustrated by South African law in particular This idea of European private law as a mixed legal system is then applied to the law of contracts torts and property This book takes up the challenge to give



a critical examination on the various methods of creating this ius commune A detailed table of contents list of abbreviations bibliography table of cases and index complete the book and make it a valuable study for everyone interested in European private law

**European Private Law: Sources** Jurgen Basedow, 2000-12-21

**Making European Private Law** Fabrizio Cafaggi, Horatia Muir Watt, 2010-01-01 This is a remarkably ambitious work of scholarship What can Europe bring to private law and what can it take away And how do we shape the institutional design of the governance models that comprise Europe A stellar collection of contributors provides important fresh insights into the evolving and varied patterns according to which private law is generated in Europe Stephen Weatherill Somerville College Oxford UK The debate concerning the desirability and modes of harmonisation of European Private Law EPL has until now been mainly concerned with substantive rules The link between rules and institutions suggests that governance of both the process of harmonisation and its outcome is necessary This book covers various perspectives on the challenge of designing governance for EPL the implications of a multi level system in terms of competences the interplay between market integration and regulation the legitimacy of private law making the importance of self regulation the usefulness of conflict of law rules the role of intergovernmental institutions and the aftermath of enlargement In addressing these the book's achievements are to successfully link two areas of scholarship that have so far remained separate EPL and new modes of governance and to address institutional reforms The contributions offer different proposals to improve governance the creation of a European Law institute the improvement of judicial cooperation among national courts the use of committees for implementation of EPL Suggesting practical institutional reforms that can improve the process of Europeanisation of private law this book will be of great interest to scholars of law politics political science sociology and economics It will also appeal to policymakers and members of both European institutions and national institutions dealing with European matters

**Commercial Trusts in European Private Law** Michele Graziadei, Ugo Mattei, Lionel Smith, 2005-11-03 In European legal systems a variety of approaches to trust and relationships of trust meet the universal professionalisation of asset management services This book explores that interface in order to seek a better understanding of the legal regulation of the entrustment of wealth Within the methodology of the Common Core of European Private Law the book sets out cases on the establishment and termination of management relationships obligations of loyalty and of professionalism and the choice of law More specialized cases address collective investment collective secured lending pension funds and securitisation Reports on these cases from fifteen jurisdictions of the European Union tackle fundamental problems of trust law and show which legal techniques are deployed to solve them across Europe In addition to a much needed comparative treatment of the subject the book discusses the scholarly setting for the issues and gives guidance on the terminology in the evolving European scene

**Constitutionalization of European Private Law** Hans Micklitz, 2014-04-17 In recent years the impact of human rights and fundamental rights on private law has risen in prominence and led to a whole series of detailed investigations Constitutionalization of private law is the flag under



which most of the research on the increasing impact of national constitutional rights on national private legal orders is sailing In the absence of a European Constitution the constitutionalization of European private law suggests a process constitutionalization instead of constituent power demos and the magic constitutional moment The Charter of Fundamental Rights and the European Convention of Human Rights constitute the two pillars on which the transformation of European private law rests This volume clearly demonstrates the change that has taken place at the national and at the European level Private law is no longer immune to the intrusion of fundamental and human rights Whilst member states and the EU are driving the process by adopting ever more concrete and more comprehensive lists of human and fundamental rights at the national the European and international level with overlapping contents the true and key players in this development are the national and European courts Contributions to this volume give this process a face and a direction which is highlighted in the introduction by Hans W Micklitz

**The Struggle for European Private Law** Leone Niglia, 2015-03-26 The European codification project has rapidly gathered pace since the turn of the century This monograph considers the codification project in light of a series of broader analytical frameworks comparative historical and constitutional which make modern codification phenomena intelligible This new reading across fields renders the European codification project currently being promoted through the Common Frame of Reference and the Optional Sales Law Code proposal vulnerable to constitutionally grounded criticism traceable to normative considerations of private law authority and legitimacy Arguing that modern codification phenomena are more complex than positivist socio legal and historical approaches have suggested over the past two centuries the book stages a pathbreaking method of analysis of the law discourse nomos centred which questions at once the reduction of private law to legislation and of law to power and on this basis redefines the ways in which to counter law s disintegration and crisis in the context of Europeanisation Professor Niglia reconstructs the European codification project as a complex structure of government in the making that embodies a set of contingent world views excludes alternatives challenges the plurality of private laws and entrenches conflicts that pertain not only to form codification de codification recodification but also to dilemmas implicated in determining the substantive orientation of European private law The book investigates the position of the codifiers and their discontents in the shadow of the codification strategy pursued by the European Commission noting a new turn in the struggle over the configuration of private law which has taken place since the Savigny Thibaut dispute of 1814 which this book critically revisits exactly two centuries later This monograph is particularly aimed at readers interested in exploring the complexities and interconnections of the supposedly separate realms of comparative law European law private law legal history constitutional law sociology of law and last but not least legal theory and jurisprudence

European Private Law: Sources Jurgen Basedow, 2000-12-21

**Coherence and Fragmentation in European Private Law** Pia Letto-Vanamo, Jan Smits, 2012-08-31 One of the most important characteristics of today s private law is that it increasingly flows from different sources Next to national legislation and case law it is also shaped by European



and supranational sources and rapidly becoming a mixture of differently oriented rules and principles This development can be described as one from coherence to fragmentation The aim of the new book is to consider how this important shift has worked out in different subfields of the law like in contract and property law in competition insurance marketing and private international law as well as in the law of intellectual property This cross disciplinary approach shows how pervasive legal fragmentation has become and points out how to remedy the adverse effects it brings with it The volume is therefore indispensable for anyone interested in how Europeanisation affects national private laws     European Private Law After the Common Frame of Reference Hans W. Micklitz, Fabrizio Cafaggi, 2010-01-01 The book is a must read for anybody interested in the future development of European private law European Private Law News This volume contains a valuable collection of essays by a group of reputable academics each dealing with a particular aspect of the development of a substantive law of contract at European level The contributors have a variety of interests and perspectives The topic is clearly of great current interest throughout the European Union and beyond Peter Stone University of Essex UK European Private Law after the Common Frame of Reference brings together several interesting contributions from a distinguished group of scholars and sheds light on the important issue of legal harmonization from an interdisciplinary and comparative perspective Francesco Parisi University of Minnesota US and University of Bologna Italy The Common Frame of Reference has several potential functions some reconcilable others mutually exclusive Its size its shape its true legal nature and its content all remain contested Modest or ambitious toolbox or code in waiting Its chameleon character is its strength and simultaneously its weakness and equally the reason why it has attracted such attention In this book the editors have assembled a veritable who's who in the field and it is a terrific read Stephen Weatherill University of Oxford UK This book paves the way for and initiates the second generation of research in European private law subsequent to the Draft Common Frame of Reference DCFR needed for the 21st century The book gives a voice to the growing dissatisfaction in academic discourse that the DCFR as it stands in 2009 does not actually represent the condensed available knowledge on the possible future of European private law The contributions in this book focus on the legitimacy of law making through academics both now and in the future and on the possible conceptual choices which will affect the future of European private law Drawing on experience gained from the DCFR the authors advocate the competition of ideas and concepts This fascinating book will be a must read for European lawyers private lawyers in the Member States and academics dealing with conceptual issues of the future of the national and the European private law Advanced students in both law and international business will also find this book invaluable as will US scholars interested in the US EU comparison of different legal orders     **Constructing Modern European Private Law** Ivan Sammut, 2016-09-23 The Europeanisation of European Private Law EPL is an ongoing process that has gained momentum with the communautarisation of judicial cooperation in civil and commercial matters with the Amsterdam Treaty This work examines the governance structure of EPL It proves that more can be achieved towards the



Europeanisation of private law through a new approach involving innovative modes of governance in EPL In order to test this hypothesis it is necessary to look at this exercise from three different angles The first angle provides a study about the tools and the context with which one can further Europeanise private law and bridge the gaps between the main legal families common law and civil law The second angle encompasses a study of what has and what has not been achieved in the development of EPL by looking at both EU and non EU initiatives The final angle then examines the role of governance in the future development of EPL As such this study confirms that the further Europeanisation of EPL requires a multi level mode of governance confirming the traditional supra national Community Method mode of governance in EPL with the introduction of intra governmental innovative methods in EPL such as the Open Method of Coordination OMC and soft law These innovative modes together with the traditional mode of governance can take forward the development of EPL so that it can better serve the needs of the European legal community in the future

New Directions in European Private Law Takis Tridimas, Mateja Durovic, 2021-05-20 This book brings together leading scholars and practitioners to explore contemporary challenges in the field of European private law identify problems and propose solutions The first section reassesses the existing theoretical framework and traditional legal scholarship on which European private law has developed The book then goes on to examine important and practical topics of geo blocking and standardisation in the context of recent legislative developments and the CJEU case law The third section assesses the challenging subject of adequate regulation of online platforms and sharing economy that has been continuously addressed in the recent years by European private law A fourth section deals with the regulatory challenges brought by an increasing development of artificial intelligence and blockchain technology and the question of liability The final section examines recent European legislative developments in the area of digital goods and digital content and identifies potential future policy directions in which the European private law may develop in the future

*Customary Law Today* Laurent Mayali, Pierre Mousseron, 2018-06-21 This book addresses current practices in customary law It includes contributions by scholars from various legal systems the USA France Israel Canada etc who examine the current impacts of customary law on various aspects of private law constitutional law business law international law and criminal law In addition the book expands the traditional concept of the rule of law and argues that lawyers should not narrowly focus on statutory law but should instead pay more attention to the impact of practices on real legal life It states that the observation of practices calls for a stronger focus on usage customs and traditions in our legal systems the idea being not to replace statutory law but to complement it with customary observations

**Legal Pluralism in European Contract Law** Vanessa Mak, 2020 The aim of this series is to publish important and original research on EU law The focus is on scholarly monographs with a particular emphasis on those which are interdisciplinary in nature Edited collections of essays will also be included where they are appropriate The series is wide in scope and aims to cover studies of particular areas of substantive and of institutional law historical works theoretical studies and analyses of current debates as well as



questions of perennial interest such as the relationship between national and EU law and the novel forms of governance emerging in and beyond Europe The fact that many of the works are interdisciplinary will make the series of interest to all those concerned with the governance and operation of the EU Book jacket



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