

# Hart Publishing 2014

Good Books for Lawyers



# Welcome

Leafing through the pages of a publisher's catalogue is a little like wandering in a garden in springtime. It is fascinating to see what has germinated, what is growing, and what is now flowering. The publisher's catalogue is a window on the publisher's garden where, after much patient toil, the right plants are now growing, and the weeds have hopefully been suppressed. In truth it is the authors who have contributed most of the hard labour, while the publisher's efforts are largely confined to some gentle pruning and watering. Bearing this in mind we hope you will once again enjoy wandering in this particular garden and that bright and interesting blooms will attract your attention.

After an historic year which has seen Hart become part of the Bloomsbury Publishing Group, we naturally expect that our first catalogue following the acquisition will attract rather more than usual interest. The question which many people have asked is "Will Hart be continuing with its traditions of scholarly excellence, high quality production and dynamic marketing?" We think that this catalogue emphatically answers that question with a resounding "Yes". On almost every page is evidence of scholarship which engages one or more of the fundamental aims of legal scholarship – questioning, investigating, analysing, imagining, theorising and restating the law. From monographs on Magna Carta, antitrust law, criminology and legal philosophy, as well as textbooks on tort, international law and European law, to Commentaries on human rights law and international arbitration via practitioners works on contract damages, immigration and asylum law as well as empirical studies of the privatisation process in public prisons and prenuptial agreements, the 2014 Hart catalogue can perhaps claim to be the most diverse and unpredictable of any law publisher in the common law world.

After almost 18 years of publishing law books Hart Publishing is proud of having developed a reputation for publishing books that have consistently explored the boundaries of scholarship and emphasised the importance of original and courageous thinking. That reputation, and the work that has gone into creating it, continues under new ownership, and all our authors and readers are warmly commended to sample the evidence of the continuing vitality of the Hart list.

Richard Hart, January 2014

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# Journals

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JOURNAL**



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Dr Christian Henderson, University of Liverpool  
Professor Dr Tom Ruys, University of Ghent

Book Review Editor:

Dr Francis Grimal, University of Buckingham

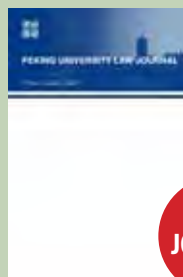
*The Journal on the Use of Force and International Law* (JUFIL) is a new peer-reviewed journal covering all aspects of the law governing the use of force (*jus ad bellum*), as distinct from other areas of international law relating to security issues, such as International Humanitarian Law or International Criminal Law. The Journal aims to provide a forum for top quality international research into all facets of the law governing the use of force, covering issues such as the nature and scope of the inherent right of self-defence, the use of force authorised by the UN Security Council and force employed for humanitarian purposes. As such, it has a focused mandate, whilst engaging with the 'jus ad bellum' broadly defined, ensuring a wide appeal.

In addition to publishing research of the highest quality and impact, of both a theoretical and more practical nature, the Journal will support the conducting of research, through a digest of state practice on the use of force - a relatively unique feature for an international law journal - which will act as a key means of assessing the development of customary international law in the area. The Journal will also feature book reviews that significantly engage with the key works in the field.

The Journal is published in English, but is open to submissions from anywhere in the world, from writers of whatever background writing on any topic related to the *jus ad bellum*. All submissions will be double-blind peer reviewed. A subscription consists of two issues.

Print ISSN: 2053-1702; Online ISSN: 2053-1710

[WWW.HARTJOURNALS.CO.UK/JUFIL](http://WWW.HARTJOURNALS.CO.UK/JUFIL)



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Editor-in-Chief: Liang Genlin

Associate Editor-in-Chief: Liu Yan

The aim of the *Peking University Law Journal* is to provide a window on Chinese law for anyone interested in the continuing development of Chinese law and society. In pursuing this aim the Journal publishes original English-language articles written by Chinese and foreign scholars on Chinese legal traditions, and the rule of law in Chinese society. It also publishes original English-language articles which engage comparatively with Chinese law and the rule of law in China. A subscription consists of two issues.

Print ISSN: 2051-7483; Online ISSN: 2052-5907

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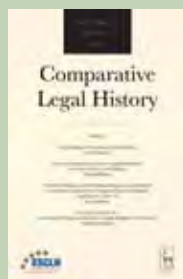
## **Cape Town Convention Journal**

General Editor: Jeffrey Wool, University of Washington

Editor: Rafal Zakrzewski, University of Cambridge

Print ISSN 2049-761X; Online ISSN 2049-7628

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Articles Editor: Heikki Pihlajamäki, University of Helsinki

Reviews Editor: Agustín Parise, Maastricht University

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## European Competition Journal

Edited by: Philip Marsden, Director, The Competition Law Forum, BIICL  
Simon Bishop, Partner, RBB Economics

Print ISSN: 1744-1056; Online ISSN: 1757-8396

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Maria Kaiafa-Gbandi, Aristotle University of Thessaloniki  
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Print ISSN 2191-7442; Online ISSN: 2193-5505

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## Law and Financial Markets Review

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Print ISSN 2048-8432; Online ISSN 2048-8440

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## The Journal of Media Law

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Print ISSN 1757-7632; Online ISSN 1757-7640

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### FORTHCOMING IN 2015

## The Ibero-American Journal of International Criminal Justice

Editor in Chief: Hector Olasolo Alonso, Professor of International Criminal Law and International Criminal Procedure, University of Utrecht  
Editorial Secretary: Ms. Andrea Rugeles, Professor of International Criminal Law, El Rosario University in Bogotá  
Advisory Committee: ICC Judges: Rene Blattmann, Elizabeth Odio Benito and Sylvia Steiner

This new journal is dedicated to publishing the latest and best scholarship on international criminal justice from Latin America and the Iberian Peninsula. It is a joint initiative between Hart Publishing and the Ibero-American Institute for Peace, Human Rights and International Justice in The Hague (IIH). One issue will be published each year.

Print ISSN 2051-6657; Online ISSN 2051-6665

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| 2011-2012 | 149 |
| 2013      | 106 |
| 2014      | 140 |

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# Arbitration and ADR



## International Arbitration in Germany A Handbook

Marcel Barth and Gerhard Wegen

While the availability and efficacy of arbitration in London, Paris and New York is well known, and the popularity of the Swiss system widely accepted, less is known about the mechanisms available for arbitrating international disputes in Germany. In fact Germany boasts a well-developed system of arbitration which is streamlined, efficient and inexpensive, but which has been hitherto overlooked in favour of

other jurisdictions. This new work by experienced German lawyer arbitrators, explains in detail the workings of the German system for international arbitration - the basis of its code, its institutional architecture, and its procedural features. Thus this work presents, for the first time, the full workings of the German system to an English-speaking audience.

**Marcel Barth** is managing partner of the Hanover branch of Price Waterhouse Coopers.

**Gerhard Wegen** is a partner in Gleiss Lutz in Stuttgart, and Professor of Law at the University of Tübingen.

|     |               |       |        |      |      |         |
|-----|---------------|-------|--------|------|------|---------|
| Hbk | 9781849463607 | 800pp | Sep 14 | £195 | €260 | US\$390 |
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Imprint: Beck/Hart



## Complete (but Unofficial) Guide to the Willem C Vis Commercial Arbitration Moot

Jörg Risse

explains registration and offers tips on finding and organizing the team, analyzing the case, writing memoranda, presenting the case in the oral pleadings, and organizing trips to Vienna or Hong Kong. Any student contemplating taking part in the "Moot Experience" will find the information needed to make the Vis Moot a real lifetime experience.

Jörg Risse is a partner in Baker & McKenzie's Dispute Resolution Group, Germany

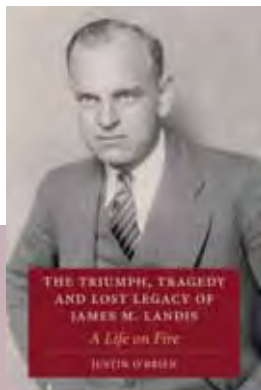
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Eleven teams of student participants attended the first Willem C. Vis International Arbitration Moot in 1993/1994. Twenty years later 290 teams from 67 countries plus a huge number of coaches and arbitrators gather in what is now considered one of the largest international arbitration events in the world. The cases dealt with are based on an international sales transaction governed by CISG, including procedural issues of arbitration.

This book is meant for participants of the Vis Moot. It provides the reader with step-by-step practical advice to maximize his or her Vis Moot experience. It

# Banking and Financial Law



## **The Triumph, Tragedy and Lost Legacy of James M Landis**

**A Life on Fire**

Justin O'Brien

James M Landis - scholar, administrator, advocate, and political advisor - is known for his seminal contribution to the creation of the modern system of market regulation in the USA. As a highly influential participant in the politics of the New Deal he drafted the statute which was to become the foundation for Securities Regulation in the US, and by extension the founding principle of financial market regulation across the world. He was also a complex and in some ways tragic figure, whose glittering career collapsed following the revelation that he had evaded paying tax. This candid and revealing book sets his life and achievements in the context of his work as an academic, legislative draughtsman, Dean and administrator, and explains for the first time how and why, shortly before his early death, Landis abandoned his theory of market regulation in favour of a model which finds loud echoes in the aftermath of the world's recent financial crises.

**Justin O'Brien** is an Australian Research Council Future Fellow, Professor of Law and Director of the Centre for Law, Markets and Regulation, University of New South Wales.

|     |               |       |        |     |     |        |
|-----|---------------|-------|--------|-----|-----|--------|
| Hbk | 9781849466172 | 202pp | Jul 14 | £35 | €58 | US\$60 |
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Adobe ebook and EPub available



## **Legal Challenges in the Global Financial Crisis**

**Bail-outs, the Euro and Regulation**

Edited by Wolf-Georg Ringe and Peter M Huber

(the academy, practice and policy-making) and a number of different jurisdictions. The volume illustrates how interdisciplinary scholarship belongs at the centre of any discussion of the economic crisis, and indeed regulation theory more generally. This is a timely exploration of cutting-edge issues of financial regulation.

Wolf-Georg Ringe is a Professor of International Commercial Law at Copenhagen Business School.

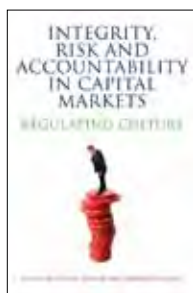
Peter M Huber is Professor of Law at the Ludwig-Maximilians-Universität Munich and judge at the German Federal Constitutional Court in Karlsruhe.

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| Hbk | 9781849464390 | 263pp | Jan 14 | £60 | €78 | US\$120 |
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Series: Studies of the Oxford Institute of European and Comparative Law

The global financial and economic crisis which started in 2008 has had devastating effects around the globe. It has caused a rethinking in different areas of law, and posed new challenges to regulators and private actors alike. While commentary on financial regulation and the global financial crisis abounds, it tends to remain within disciplinary boundaries. This volume not only brings together scholarship from different areas of law (constitutional and administrative law, EU law, financial law and regulation), but also from a variety of backgrounds



## **Integrity, Risk and Accountability in Capital Markets**

### **Regulating Culture**

Edited by Justin O'Brien and George Gilligan

The global economy is yet to recover from the aftershocks of the Global Financial Crisis (GFC). Governments, regulatory agencies, international organisations, media commentators, finance industry organisations and professionals, academics and affected citizens have offered partial explanations for what has occurred. However, the exposure post-GFC of the scandal surrounding the manipulation over many years of the London Interbank Offered Rate (LIBOR) highlighted that the most important obstacles to counter the destructive potential of our global finance

system are normative not technical. Regulating the culture of the finance sector is one of the greatest challenges facing contemporary society.

This edited volume brings together leading professionals, regulators and academics with knowledge of how cultural forces shape integrity, risk and accountability in capital markets. The book will be of benefit to industry, regulatory and academic communities whose focus is upon financial markets and professionals. As national economies become ever more inter-connected and inter-dependent under conditions of global financial capitalism, it becomes ever more important to know how cultural and other normative forces might be adjusted to militate against the effects of future disasters.

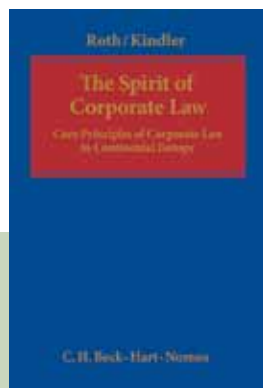
Justin O'Brien is an Australian Research Council Future Fellow, Professor of Law and Director of the Centre for Law, Markets and Regulation, University of New South Wales.

George Gilligan is a Senior Research Fellow at the Centre for Law, Markets and Regulation, University of New South Wales.

|     |               |       |        |     |        |        |
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| Pbk | 9781849465670 | 318pp | Sep 13 | £45 | €58.50 | US\$90 |
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Adobe ebook and EPub available

# Company and Insolvency Law



## **The Spirit of Corporate Law**

### **Core Principles of Corporate Law in Continental Europe**

Günter H Roth and Peter Kindler

Reading the Company Law Action Plan of the European Commission (issued on 21 May 2003) it is impossible not to gain the impression that European company law policy is focused on listed companies, and that their efficiency will be enhanced, if possible, by means of state competition, and only out of necessity by means of harmonisation.

This book adopts a different approach, based first of all on the fact that throughout Europe only a small number of corporations are listed at all – the reality of corporate law is dominated by small and medium-size enterprises. Therefore legal standards pertaining to control transactions or investor protection and other topics of capital market law are not part of the core principles of corporate law. The question is not how to protect best the interests of shareholders but rather the interests of all parties affected by a firm's activities, including its creditors and third parties.

This book focuses on the perspective of key jurisdictions in continental Europe, such as (in an alphabetical order) Austria, France, Germany, Italy, Spain, Switzerland, while also analysing seminal developments in the Netherlands, Portugal, and the Scandinavian countries.

**Günter H Roth** is a former Professor of Law at the University of Innsbruck.

**Peter Kindler** is Professor of Law at the Ludwigs-Maximilian University Munich.

|     |               |       |        |      |      |         |
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| Hbk | 9781849465885 | 220pp | Nov 13 | £100 | €130 | US\$200 |
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## The European Insolvency Regulation

Heidelberg-Luxembourg-Vienna Report

Burkhard Hess, Paul Oberhammer and Thomas Pfeiffer

Regulation No 1346/2000 of 29 May 2000 (EIR) is the cornerstone of European insolvency law. The Regulation, which is directly applicable in all Member States, is the legal basis for cross-border insolvencies within the European Union. Paving the way for a new European insolvency law, the Heidelberg-Luxembourg-Vienna Report carries out a comprehensive legal and empirical evaluation of European insolvency law practice in the Member States. Based on thorough analyses the general reporters evaluate the Regulation and provide recommendations for its current revision.

Burkhard Hess is the founding and executive director of the Max Planck Institute for International, European and Regulatory Procedural Law in Luxembourg. Paul Oberhammer is Professor in Law at the University of Vienna. Thomas Pfeiffer is Professor in Law at the University of Heidelberg.

Hbk 9781849466028 800pp Dec 13 £140 €182 US\$280

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## Corporate Laws of the World A Handbook

Edited by Gerhard Wegen, Marcel Barth and Andreas Spahlinger

This handbook contains detailed reports on the corporate laws of almost 50 countries worldwide. Following a common structure, each country report is approximately 50 pages in length. Within each report the following information is presented: The legal status of private limited liability companies; the legal status of public companies; registration requirements; foundation; duration; name; legal capacity; memorandum and articles of association; capital and protection of capital; rights and duties of shareholders; corporate bodies and officers; power of representation; liability of corporate bodies; liability of shareholders; listing of the corporation; employee participation; annual financial statement; disclosure obligations; transfer of shares; encumbrance of shares; establishment of branches; insolvency; liquidation and winding-up; taxation; conversion; conflict of laws; cross-border structuring; overview of the law concerning capital markets.

Gerhard Wegen is a partner in Gleiss Lutz, Stuttgart and Professor of Law at the University of Tübingen.

Marcel Barth is managing partner of the Hanover branch of Price Waterhouse Coopers.

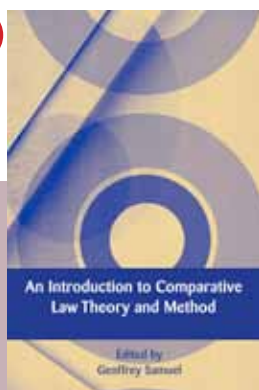
Andreas Spahlinger is a partner in Gleiss Lutz, Stuttgart.

Hbk 9781849461979 1500pp Oct 14 £380 €494 US\$760

Adobe ebook available

Imprint: Beck/Hart

# Comparative Law



## An Introduction to Comparative Law Theory and Method

Geoffrey Samuel

This short book on comparative law theory and method is designed primarily for postgraduate research students whose work involves comparison between legal systems. It is, accordingly, a book on research methods, although it will also be of relevance to all students (undergraduate and postgraduate) taking courses in comparative law. The substance of the book has been developed over many years of teaching general theory of comparative law primarily on the European Academy of Legal Theory programme in Brussels but also on other programmes in French, Belgian and English universities. It is arguable that there has been to date no single introductory work exclusively devoted to comparative law methodology and thus this present book aims to fill this gap.

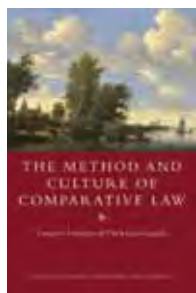
**Geoffrey Samuel** has been Professor of Law at Kent Law School since 1997 and is Co-Director of the Kent Centre for European and Comparative Law.

Pbk 9781849466431 168pp May 14 £16.95 €22 US\$34

EPub available

Series: European Academy of Legal Theory Series





## The Method and Culture of Comparative Law

Essays in Honour of Mark Van Hoecke

Edited by Maurice Adams and Dirk Heirbaut

Awareness of the need to deepen the methodological foundations of legal research is only recent. The same is true for comparative law, by nature a more adventurous branch of legal research, which is often something researchers simply do, whenever they look at foreign legal systems to answer one or more of a range of questions about law, whether these questions are doctrinal, economic, sociological, etc. Given the diversity of comparative research projects, the precise contours of the methods employed, or the epistemological issues raised by them, are to a great extent a function of the nature of the research questions asked. As a result, the search for a unique, one-size-fits-all comparative law methodology is unlikely to be fruitful. That however doesn't make reflection on the methodology and culture of comparative law meaningless. Mark Van Hoecke has, throughout his career, been interested in many topics, but legal theory, comparative law and methodology of law stand out. Building upon his work, this book brings together several authors working at the crossroads of these themes: the methodology of comparative law.

Maurice Adams is Full Professor of Jurisprudence at the University of Tilburg.  
Dirk Heirbaut is Professor of Legal History and Roman Law at Ghent University.

Hbk 9781849466233 304pp May 14 £60€78 US\$120

Adobe ebook and EPub available



## A Critique of Codification

Leone Niglia

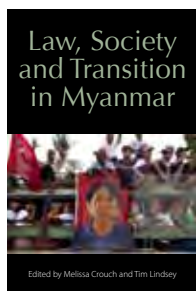
The European codification project has gathered pace rapidly in recent times. This new book considers the codification project in light of a series of broader analytical frameworks - comparative, historical and constitutional - which make modern codification intelligible. This new reading renders the 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. Leone Niglia reconstructs the European codification project as a complex structure of government-in-the-making that embodies a set of contingent worldviews, 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 that has taken place since the age of codification.

Leone Niglia is Director of the Centre for European Legal Studies and Reader/Associate Professor of European Law at the School of Law, University of Exeter.

Hbk 9781849462600 172pp Aug 14 £30 €39 US\$60

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Series: Modern Studies in European Law



## Law, Society and Transition in Myanmar

Edited by Melissa Crouch and Tim Lindsey

This is the first edited volume to address the dynamics of the legal system of Myanmar/Burma in the context of the dramatic transition to democracy that formally began in 2011. It includes contributions from leading scholars in the field on a range of key legal issues now facing Myanmar, such as judicial independence, constitutional law, human rights and institutional reform. It features chapters on the legal history of Myanmar; electoral reform; the role of the judiciary; economic reforms; and the state of company law. It also includes chapters that draw on the experiences of other countries to contextualise Myanmar's transition to democracy in a comparative setting, including Myanmar's participation in regional bodies such as ASEAN. This topical book comes at a critical juncture in Myanmar's legal development and will be an invaluable resource for students and teachers seeking greater understanding of the legal system of Myanmar. It will also be vital reading for a wide range of government, business and civil society organisations seeking to re-engage with Myanmar, as it navigates a difficult transition toward democracy and the rule of law.

Melissa Crouch is a Postdoctoral Fellow at the Law Faculty, National University of Singapore.

Tim Lindsey is Malcolm Smith Professor of Asian Law and Director of the Centre for Indonesian Law, Islam and Society, the University of Melbourne.

Hbk 9781849465977 376pp Aug 14 £60 €78 US\$120

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# Competition Law



## European State Aid Law and Policy

Third Edition

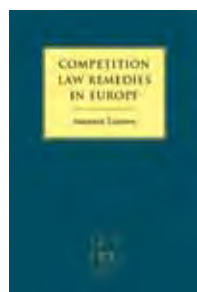
Conor Quigley QC

This third edition of Conor Quigley's highly acclaimed book offers the most comprehensive and detailed examination of European State Aid law. The book is designed to provide lawyers, regulators, public officials and students with a definitive statement of the law and practice of State Aid. At the same time as placing State Aid law and policy in its economic, commercial and industrial context, the book fully explores the concept of State Aid and its function as a tool of EU law. All of this is achieved

by means of the most thorough examination of the extensive jurisprudence of the European Courts and the decisions, legislation and guidelines of the Commission in declaring aid compatible or incompatible with the internal market. The analysis incorporates all the developments wrought by the European Commission's 2013 State Aid Modernisation programme, including detailed chapters on Research & Development, environment and energy, restructuring aid, risk capital for SMEs, as well as sectoral aid including, in particular, a detailed assessment of State Aid and the financial crisis. The Commission's supervisory powers as well as the means of enforcing State Aid law in the EU and national courts are also fully explained.

**Conor Quigley QC** is a Barrister specialising in EU law at Serle Court, Chambers.

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| Hbk            | 9781849466271 | 866pp | May 14 | £225 | €292 | US\$450 |
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## Competition Law Remedies in Europe

Ioannis Lianos

This volume presents a comprehensive legal and economic analysis of competition law remedies in Europe. Part 1 examines the philosophy and objectives of these remedies and their interaction with the substantive and institutional aspects of competition law enforcement, analysing the impact of specific types of remedies in relation to optimal enforcement and looking at legal and economic literature, case law and empirical research. In this field different issues arise in devising remedies for cartel infringements, infringements involving unilateral abuses of market power, and infringements involving access to proprietary information or resources. In all these cases different remedies may be imposed - contractual, behavioural or structural, plus damages. Part 2 looks at merger control, which requires a different analysis again, involving the costs of remedial action, the probability of compliance, the short- or long-term impact of the remedy, the risk of strategic conduct of the merging parties, and the choice of monitoring and compliance mechanisms. Part 3 examines the procedural implications of injunctions, interim measures, private action-led injunctions, measures-declaratory actions and procedural/administrative issues in public enforcement. Part 4 concludes by examining creative remedies and reforms that should be made to the current remedial regime in Europe, including

the interaction with remedies adopted by other jurisdictions in a world of multi-jurisdictional competition law enforcement.

Ioannis Lianos is the City Solicitors Educational Trust Reader in European Union law at University College London.

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## International Handbook on Unfair Competition

Edited by Frauke Henning-Bodewig

This handbook sets out the Unfair Competition laws of 21 different countries, explaining the general background, legal basis, protections for competitors and consumers and issues of enforcement.

Frauke Henning-Bodewig is head of a research unit at the Max Planck Institute for Intellectual Property in Munich and Professor at the University of Erlangen.

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## European Merger Remedies Law and Policy

Dorte Hoeg

As merger transactions become more complex, so do the remedies involved. This book seeks to identify and examine the most important aspects of merger remedies, which have emerged and evolved in the European Commission's policy and practice over the past 20 years. The in-depth analysis of applicable provisions and guidelines is structured in accordance with a typical 'remedies lifecycle': the negotiation, submission, assessment, adoption, implementation and enforcement of remedies. Furthermore, numerous conditional clearance decisions and judgments as well as studies and legal literature on the subject are described and put into a coherent analytical framework with the aim of providing as much nuance as possible in the evaluation of the Commission's past and present remedies policy and practice.

While the Commission indisputably has accomplished numerous successes in its remedies enforcement over the years, it has also encountered some significant obstacles and shortcomings along the way. To this effect, the final chapter in the book critically assesses whether the current framework, which has remained unchanged since 2008, continues to provide an adequate regulatory response to today's remedies issues and challenges. Where adjustments and improvements are deemed desirable or necessary, possible measures are considered.

Dorte Hoeg is a former national expert and case-handler at the European Commission's Directorate-General for Competition.

Hbk 9781849464116 288pp Dec 13 £65 €85 US\$130

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Series: Hart Studies in Competition Law



## Fairness in Antitrust Protecting the Strong from the Weak

Adi Ayal

What drives popular support for state-enforced competition policy? What is it about antitrust law that garners approval from both the public and courts, to the point of demonizing large firms convicted of antitrust offenses? In this book Adi Ayal argues that the populist roots of antitrust are still with us, guiding sentiment towards a legal regime that has otherwise shifted towards economic analysis. Antitrust is very much about fairness and morality; this book assesses how modern policy has hijacked popular support - based on traditional conceptions of political and economic power - to combat market power in narrowly defined micro-markets.

Beginning with history, but delving into moral and political philosophy, Professor Ayal shows how arguments concerning fairness in antitrust, applied both to monopolists and their victims, require a balancing test based on context and respecting the rights of both. While traditionally fairness arguments were used to justify intervention where economic analysis did not, this book assesses them from first principles to show that pure efficiency analysis is flawed from a moral standpoint when the state intervenes. Protecting weak consumers from strong monopolists may carry rhetorical weight, but the reality of antitrust is that the state is much more powerful than almost all firms it regulates.

Protecting the strong from the weak, especially when 'weak' consumers hold legal power and influence, might very well be a moral imperative.

Adi Ayal is a Professor in the Faculty of Law at Bar Ilan University.

Hbk 9781849465151 240pp Apr 14 £50 €65 US\$100

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Series: Hart Studies in Competition Law



## European Distribution Law A Commentary

Edited by Eckhard Flohr and  
Michael Martinek

This handbook covers the European law of distribution, that is, the European primary and secondary legislation, the leading decisions of the European courts and supreme courts of the European Member states, and the common principles of European or international distribution law. The national laws of distribution are covered in so far as they illustrate the implementation of European law, or when they are of outstanding importance for the distribution practice within the European Community. The focus is on supranational EU law relevant for distribution and services, constituting the *acquis communautaire* in the Member States.

The book is divided into two parts - general, and distribution agreements in detail.

Eckhard Flohr practises law in Germany and Austria and is a part-time Professor specialising in the law of distribution.

Michael Martinek is Professor of Law at the University of Saarbrücken.

Hbk 9781849461931 1500pp Jul 14 £320 €416 US\$640

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Imprint: Beck/Hart



## EU Competition Law An Analytical Guide to the Leading Cases Fourth Edition

Ariel Ezrachi



This book is the fourth edition of a highly practical guide to the leading cases in European Competition Law, focusing primarily on Article 101 TFEU, Article 102 TFEU and the European Merger Regulation. In addition it explores the public and private enforcement of Competition Law, the intersection between Intellectual Property Rights and Competition Law and the application of Competition Law to State action. Each chapter outlines the relevant laws, regulations and guidelines for each of the topics. Within this framework, cases are reviewed in summary form, accompanied by analysis and commentary.

Endorsements:

"This book should be in the library of every competition law practitioner and academic. The summary of cases is first class. But what makes it really stand out is the quality of the commentary and the selection of the material which includes not only the most important European judgements and decision but also some of the leading cases from the US and European Member States."

Ali Nikpay, Gibson, Dunn & Crutcher

Ariel Ezrachi is the Slaughter and May Professor of Competition Law at the University of Oxford and the Director of the Oxford Centre for Competition Law and Policy. He is a Fellow and Tutor in Law at Pembroke College, Oxford.

Pbk 9781849465519 648pp Sep 14 £35 €46 US\$70

EPub available



## European Competition Law Annual 2011

Integrating Public and Private Enforcement of Competition Law - Implications for Courts and Agencies

Edited by Philip Lowe and Mel Marquis

Every year, top-level market regulators, academics and legal and economic practitioners contribute to the Annual Competition Workshop organised at the European University Institute in Florence. The Co-Directors of the Workshop are Philip Lowe, Mel Marquis and Giorgio Monti.

Workshop participants address and critically analyse a particular set of topical issues in the field of competition law and policy. The proceedings are published in Hart's European Competition Law Annual series.

This volume contains papers presented at the 16th Annual EU Competition Law and Policy Workshop, held at the European University Institute on 17-18 June 2011. This edition of the Workshop examined the emerging and increasingly important use of private rights of action before national courts, and the prospects for legislation and soft law initiatives at the level of the EU. The book has been updated and reflects the European Commission's private enforcement package of June 2013. Furthermore, the experiences of various national jurisdictions are discussed, both within Europe and in the US and Canada. As a whole, the volume explores how public and private enforcement might function harmoniously, as an 'integrated' system, to promote the public interest while ensuring that individual rights created in this field by the EU competition rules are vindicated. The contributors have however devoted significant analysis to the tensions between those two modes of enforcement.

Philip Lowe is Director General of DG Energy of the European Commission. He was Director-General of DG Competition from 2002 to 2010.

Mel Marquis is Part-time Professor of Law at the European University Institute and Professore a contratto at the University of Verona.

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Adobe ebook available

Series: European Competition Law Annual



## European Competition Law Annual 2012

Regulation, Public Policies and Economic Distress

Edited by Philip Lowe and Mel Marquis

This is the seventeenth in the ECLA series. It encompasses numerous chapters that examine competition policy and its relationships with regulatory and other public policies, against the general background of prolonged economic crisis. In these chapters the contributors discuss legal and economic issues relating to network industries, industrial, environmental and trade policy, and intellectual property and innovation policies, among others. Comparative views and the views of judges from different jurisdiction are provided, and techniques for mediating among different policy objectives and frameworks are discussed.

Philip Lowe is Director General of DG Energy of the European Commission. He was Director-General of DG Competition from 2002 to 2010.

Mel Marquis is Part-time Professor of Law at the European University Institute and Professore a contratto at the University of Verona.

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Series: European Competition Law Annual



## European State Aid Law A Commentary

Edited by Franz Jürgen Säcker and Frank Montag

The regulation of state aid belongs to the core areas of European Union law. Without the general prohibition of state subsidies to undertakings competitiveness would be distorted and the benefits of the internal market would be put in jeopardy.

This book deals systematically article-by-article with the basic principles, the proceedings, and the implementation of state aid law as laid down in Articles 107 to 109 TFEU, as well as the general block exemptions regulation (Regulation No 800/2008) and the Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 TEC. Further, this commentary deals in detail with the rules regulating state aid in specific sectors such as telecommunication, postal services, broadcast and television, energy/coal, banking, railroads, road transport, shipping, air traffic/airports, automotive industry, shipbuilding, steel, housing, agriculture, fishery, culture/tourism/sport, and health.

Franz Jürgen Säcker is Professor of civil law at the Free University of Berlin and director of the Institute for German and European Business, Competition and Regulatory Law, Berlin.

Frank Montag is an antitrust, competition and trade partner in the Brussels office of Freshfield Bruckhaus Deringer.

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| Hbk | 9781849461900 | 800pp | May 14 | £320 | €416 | US\$640 |
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## An Introduction to Competition Law

Second Edition

Piet-Jan Slot and Angus Johnston



Competition law is a subject of central and growing importance in modern legal systems. An accessible introduction to this legal field is thus indispensable for students and practitioners alike. This book is intended to be the first work that students new to the subject will read and is written in particular for those who intend to study a foundation course in competition law. The second edition has been fully updated in the light of the latest developments.

Competition law in the UK consists of two main levels: EU competition law and UK competition law. This introduction covers both levels in an integrated fashion, together with an abbreviated introduction to the EU rules on State aids. Therefore, for the prohibition of cartels, the prohibition of the abuse of a dominant position and the supervision of concentrations (ie mergers and acquisitions) a range of examples from European and UK practice are provided. Using this approach, the book aims to reach a broad range of readers: students and teachers in higher education, as well as officials and practising lawyers who may not usually face competition law issues in their working lives.

Piet-Jan Slot is Professor of European and Economic Law and Director of the Europa Instituut at the University of Leiden.

Angus Johnston is Senior Law Fellow and CUF Lecturer at University College, Oxford.

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| Pbk9 | 781849461801 | 272pp | Sep 14 | £25 | €32.50 | US\$50 |
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## Sanctions in EU Competition Law

Principles and Practice

Michael Frese

In the early decades of European integration the enforcement of EU competition law was highly centralised. Virtually all enforcement actions under Articles 101 and 102 TFEU were initiated by the European Commission. More recently the enforcement of EU competition law has become less centralised - many would say even decentralised. In 2004, essentially in an effort to increase enforcement capacity in the wake of EU enlargement, the involvement of Member State competition authorities was significantly reinforced by national authorities being given power to pursue infringements of EU competition law largely on the basis of their domestic enforcement regimes.

This combination of decentralisation and enforcement autonomy raises questions about the relationship between EU law and national law, as well as about the costs of enforcement. This new book links these questions by analysing how competences in the area of sanctions are distributed between EU and national law, and how this influences the costs of enforcement. The author's conclusions, which highlight the economic implications of the choices made by competition authorities, courts and legislators, will be of use to all the above in further developing EU competition policy.

The thesis on which this book is based was declared runner-up in the 2013 Concurrences Awards.

Michael Frese is a fellow at the Amsterdam Centre of European Law and Governance and the Amsterdam Center for Law & Economics and practices law in Brussels.

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Series: Hart Studies in Competition Law



## Media Ownership and Control

Law, Economics and Policy in an Indian and International Context

Suzanne Rab and Alison Sprague

Competition and diversity in media and communications are fundamental to a healthy economy and democracy. In India and internationally there is no consensus on the exact manner and scope of interventions that are appropriate to protect competition and pluralism in media markets.

Many emerging economies including India are seeking to adopt their own regulation in this area taking their lead from the UK. The issues have been brought into sharp focus in India in recent years. First, the enactment and implementation of modern - but sector neutral - competition law under the Competition Act 2002 has caused a step change in regulation towards an economics and effects-based approach. Second, in 2013 the India telecoms regulator launched controversial reform proposals to apply a media-specific approach to ownership regulation.

As academics, lawyers, businesses, regulators and policy-makers in India cast a glance at the international experience, this book examines the legal, economic and policy issues relating to regulation of ownership and control of media markets. The focus of comparative assessment is on examples from the European Union, EU Member States and the US.

Suzanne Rab is a barrister specialising in competition law and regulation at Serle Court Chambers.

Alison Sprague is a media consultant with Competition Economists Group.

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| Hbk | 9781849466356 | 224pp | Aug 14 | £60 | €78 | US\$120 |
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Series: Hart Studies in Competition Law



## Competition Law

Text, Cases and Materials

Fourth Edition

Valentine Korah and Ioannis Lianos



The fourth edition of this book, now co-authored by Ioannis Lianos, includes more material on UK competition law and on the economics of competition, as well as greater introductory and analytical commentary, making the book suitable for use as a stand-alone text and materials book, or as a book of materials to be used alongside a second text. The materials have been completely updated to take into account all the recent developments in EU competition law including: new Guidelines on the method of setting fines, the Commission Notice on Immunity from fines and reduction of fines in cartel cases, the DG Competition discussion paper on exclusionary abuses, Guidelines on the assessment of non-horizontal mergers, and extracts from the leading cases of *Consortio Industries*, *British Airways v Commission*, *Microsoft Corp v Commission*, *Deutsche Telekom AG v Commission*, and *Bertelsmann AG/Sony Corporation of America v IMP (Impala)*.

As before the bulk of the text is made up of extracts from Commission Decisions, Opinions of the Advocates General at the CJEU, and judgments of the CJEU and GC. These are supplemented by extracts from EU legislation, and comments, notes and questions prepared by the authors.

"This is a book that every student, teacher, and practitioner of EC competition law will benefit from in one way or another. It is insightful and stimulating and will remain up-to-date for a long time. What is more, it cannot be beaten at the price - as is becoming of a leading book on competition law."

Stefan Enchelmaier

Valentine Korah is Professor Emeritus of Competition Law at University College London, and a Barrister.

Ioannis Lianos is the City Solicitors Educational Trust Reader in European Union Law at University College London.

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## Joint Ventures and EU Competition Law

Luis Silva Morais

This book examines the treatment of joint ventures (JVs) in EU Competition Law, and at the same time provides a comparison with US law. It starts with an analysis of the rather elusive concept of JV, encompassing both concentrative JVs (subject to merger control) and non-concentrative JVs. Although focused on possible definitions of joint ventures in terms of competition law, it also includes a broader perspective (going beyond competition law) on the different legal models of structuring cooperation links between undertakings.

At the core of the book is an attempt to build an analytical model for the assessment of JVs in terms of antitrust law, especially as regards Article 101 of the TFEU. The analytical model used proposes a set of sequential analytical levels, taking into account structural factors and specific factors related to the main constituent elements of the functional programmes of JVs. The model is applied to a substantive assessment of four main types of JVs identified on the basis of their prevailing economic function: research and development JVs; production JVs; commercialization JVs; and purchasing JVs. Also covered are particular situations of joint ownership of undertakings falling short of joint control.

Luis Silva Morais is a Professor at the University of Lisbon Law School, holds a Jean Monnet Chair of EU Law and is the senior partner of the Luis Silva Morais law firm in Lisbon.

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Adobe ebook and EPub available

Series: Hart Studies in Competition Law



## The Interface between Competition and the Internal Market

Market Separation under Article 102 TFEU

Vasiliki Brisimi

This book explores the interface between competition law and market integration in the application of Article 102 TFEU, focussing on the notion of 'market separation' - namely conduct that may hinder cross-border trade. The discussion reviews, among other things, the treatment of geographic price discrimination and exclusionary abuse, by which out-of-State competitors are affected.

'Market separation' cases are treated in the book as a case study for appraising the interface between competition and the Internal Market. On this basis, the book provides a comparative analysis of the Treaty requirements under Article 102 TFEU when applied in 'market separation' cases and the Treaty requirements under the free movement provisions. In addition, it utilises 'market separation' cases as a springboard for advancing an informed reformulation of the application of Article 102 TFEU when state action comes into play.

All in all, the analysis presented in the book deconstructs the elements for establishing 'market separation' as an abuse of the dominant position. It shows that there is nothing that would justify a distinctive treatment of 'market separation' under Article 102 TFEU, other than a principled understanding of Internal Market law as a whole: whatever understanding one reaches about the proper shape of the Internal Market, interrogation of the proper application of competition law comes after that and thus should be informed by this understanding.

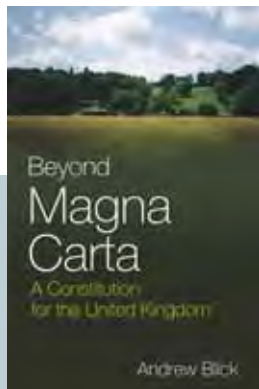
Vasiliki Brisimi is an Associate at Koutalidis Law Firm.

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Series: Hart Studies in Competition Law

# Constitutional and Administrative Law



## Beyond Magna Carta

### A Constitution for the United Kingdom

Andrew Blick

In this work Dr Blick argues that the 800th anniversary of Magna Carta, which falls in 2015, should be the occasion for a reassessment of the past, present and future of the UK Constitution. He considers a series of historical documents from Anglo-Saxon times onwards, amongst which Magna Carta is the most prominent, which sought to set out arrangements for the governance of England and later the UK as a whole. Dr Blick argues that they comprise a powerful tradition of written constitutional documents; and stresses the importance of the European dimension to their introduction and

content. He then considers the present nature of the UK Constitution, describing the period of immense flux through which it has passed in recent decades, and the implications of this phase of change. Dr Blick identifies a need for a full written constitution for the UK as the next appropriate step. Finally he discusses the democratic processes suitable to devising such a text, and what its contents might be.

**Andrew Blick** is Lecturer in Politics and Contemporary History at the Centre for Political and Constitutional Studies, King's College London.

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| Hbk | 9781849463096 | 293pp | Jan 15 | £20 | €25.90 | US\$40 |
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## Constitutionalising Europe

### The Making of a European Constitutional Law

Monica Claes

Constitutional discourse in the context of European integration has been both embraced and rejected, and has witnessed the rise and fall of the constitutional treaty, including the turmoil of the failed ratification process. This book discusses the making of a constitutional law for Europe understood in its broadest sense, as a composite constitution, consisting of constitutional rules and principles developed at the European level, complemented by national constitutional rules and principles as well as rules and principles from other sources such as the ECHR and international law. It shows how the national and European elements of this European constitutional law interrelate. Drawing on extensive comparative constitutional research, it explores the various dynamics of this intricate and multi-faceted relationship, uncovering the common European constitutional heritage on which the European Union is built, while paying attention to the rich diversity in constitutional traditions between its member states, as well as their constitutional identity.

Monica Claes is Professor of European and Comparative Constitutional Law at Maastricht University.

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## Landmark Cases in Public Law

Edited by Satvinder Juss and Maurice Sunkin

*Landmark Cases in Public Law* answers the need for an historical examination of the leading cases in this field, an examination which is largely absent from the standard textbooks and journal articles of the day. Adopting a contextualised historical approach this collection of essays by leading specialists in the field provides both an explanation of the importance and impact of the chosen decisions, as well as doctrinal analysis. This approach enables each author to throw light on what were the driving forces behind the judicial outcomes, and shows how the final reasoning of the court was ultimately as much dependent upon such human factors as the attitudes, conduct, and personalities of the parties, their witnesses, their counsel, and the judges, as the drive to seek legal realignment with the political developments which were widely perceived to be taking place. In this way, this form of analysis provides an exposition of the true stories behind the *Landmark Cases in Public Law*.

Satvinder Juss is a Professor of Law at the Dickson Poon School of Law, King's College London.

Maurice Sunkin is Professor of Public Law at the University of Essex.

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Series: Landmark Cases



## Damages for Breaches of Human Rights

### A Tort-Based Approach

Jason NE Varuhas

Damages claims under the Human Rights Act 1998 are being made with increasing frequency, yet the theoretical foundations of such damages remain obscure, and courts have struggled to develop a sound and principled approach to their award and assessment. In fashioning an approach, how should courts balance competing concerns such as the vindication of fundamental rights versus the public interest in the preservation of scarce public resources? How can human rights be valued in monetary terms? And is it permissible to read across private law damages principles to a public law context?

This book explores the foundations of human rights damages and undertakes a comprehensive examination of when such damages ought to be awarded, how they ought to be assessed, and the range of damages that ought to be available to remedy a rights-breach. The central thesis is that a vindicatory approach, modelled on what happens in domestic tort law, should be adopted. Other approaches examined include the 'mirror' idea, which ties damages in English law to the ECHR approach to monetary compensation, or the interest-balancing approach which is dependent on a judicial balancing of individual and public interests, as well as approaches drawn from EU and US Constitutional law.

Jason NE Varuhas is a Junior Research Fellow at Christ's College, University of Cambridge.

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## Special Advisers

Who they are, what they do and why they matter

Ben Yong and Robert Hazell

Viewers of *The Thick of It* will know of special advisers as spin doctors and political careerists. Several well-known ministers have been special advisers, among them David Cameron, Ed Miliband, Jack Straw and Vince Cable. People also know about the public relations disasters involving Jo Moore, Damian McBride and Adam Smith. But what is the reality? What do special advisers actually do in government? Who are they, where do they come from, and what do they go on to do? This book is the most detailed study yet carried out of special advisers. The Constitution Unit's research team, led by Dr Ben Yong and Professor Robert Hazell, assembled a comprehensive database of over 600 special advisers since 1979. They conducted written surveys, and interviewed over 100 special advisers, ministers and officials from the past thirty years. They conclude that special advisers are now a permanent and indispensable part of Whitehall, but are still treated as transient and temporary.

The book concludes with practical recommendations for increasing the effectiveness of special advisers through improvements to their recruitment, induction and training, support and supervision, and strengthening their accountability.

Ben Yong is a Lecturer in Public Law at Queen Mary, University of London. Robert Hazell is Professor of Government and the Constitution at University College London.

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Nicholas D.J. Baldwin, *The Journal of Legislative Studies*

"...provides real insight into how and why all attempts at fundamental change have failed."

Bob Hughes (Lord Hughes of Woodside), *Progress Online*

Chris Ballinger is Academic Dean and Official Fellow of Exeter College, Oxford.

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## The Evolution of Law and the State in Europe: Seven Lessons

Spyridon Flogaitis

Most books about public power and the State deal with their subject from the point of view of legal theory, sociology or political science. This book, without claiming to deliver a comprehensive theory of Law and State, aims to inform by offering a fresh reading of history and institutions, particularly as they have developed in continental Europe and European political and legal science. Drawing on a remarkably wide range of sources from both Western and Eastern Europe, the author suggests that only by knowing the history of the state, and state administration since the 12th century, can we begin to comprehend the continuing importance of the state and public powers in modern Europe. In an era of globalization, when the importance of international law and institutions frequently lead to the claim that the state either no longer exists or no longer matters, the truth is in fact more complex. We now live in an era when the balance is shifting away from the struggle to build states based on democratic values, towards fundamental values existing above and beyond the borders of nations and states, under the watchful gaze of judges bound by the rule of law.

Spyridon Flogaitis is Professor of Administrative Law at the University of Athens, Director of the European Public Law Organization, and an Attorney at Law of the Greek High Court and the Council of State. During 2013 he was the Arthur Goodhart Visiting Professor of Legal Science at the University of Cambridge.

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## The Liberty of Non-citizens Indefinite Detention in Commonwealth Countries

Rayner Thwaites

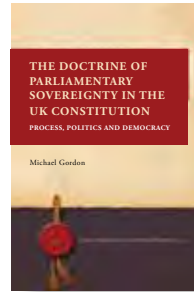
The book addresses the legality of indefinite detention in countries including Australia, the United Kingdom and Canada, enabling a rich cross-fertilisation of experiences and discourses. The issue has arisen where a government is frustrated in its ability to remove a non-citizen subject to a removal order and employs a power to detain him until removal. The cases raise fundamental questions about the nature and extent of immigration powers, the legal position of non-citizens, and counter-terrorism law and policy. More broadly, the judgments have become key reference points in discussions of constitutionalism, rights, and a range of contemporary issues in public law.

The book analyses the legal context, reasoning, and implications of the case law on indefinite detention. It argues that the law of each jurisdiction contains ample resources to support a ruling that indefinite detention is illegal. It demonstrates that, taking into account variations in legal frameworks and doctrines, a judge's response to indefinite detention is determined by his or her answer to the question whether a non-citizen, subject to a removal order, retains a right to liberty. It details how a judge's answer flows through his or her adjudication on the scope of the relevant exception to liberty.

Rayner Thwaites is a Senior Lecturer in the Faculty of Law at the University of Sydney.

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## The Doctrine of Parliamentary Sovereignty in the UK Constitution

Process, Politics and Democracy

Michael Gordon

The status of the doctrine of parliamentary sovereignty in the contemporary UK Constitution is much contested. Changes in the architecture of the UK Constitution, diminishing academic reverence for the doctrine, and a more expansive vision of the judicial role all present challenges to the relevance, coherence and desirability of this constitutional fundamental.

At a time when the future of the sovereignty of Parliament may look less than assured, this book develops an account of the continuing significance of the doctrine. It argues that a rejuvenation of the manner and form theory is required to understand the present status of parliamentary sovereignty. Addressing the critical challenges to the doctrine, it contends that this conception of legally unlimited legislative power provides the best explanation of contemporary developments in UK constitutional practice, while also possessing a normative appeal that has previously been unrecognised. This modern shift to the manner and form theory is located in an account of the democratic virtue of parliamentary sovereignty, with the book seeking to demonstrate the potential that exists for Parliament - through legislating about the legislative process - to revitalise the UK's political constitution.

Michael Gordon is a Lecturer in Law at the University of Liverpool.

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## Trial by Jury and Counter-Terrorism

Fergal Davis

The jury has been criticised as irrational and undemocratic and in recent times has received only lukewarm support from senior members of the English judiciary. However, trial by jury can have an important legitimating function as a political institution. A "right" to jury trial is however inherently vulnerable: rights discourse encourages the balancing of the jury against the right of the accused to a fair trial. Such an approach is used to justify the abolition of jury trial in the terrorism context. Retaining juries in terrorism trials is important not because trial by jury is a "right" but rather because the jury as an institution has a social and political significance, which this book explores.

This book examines a variety of jurisdictions including Australia, Ireland, Israel, New Zealand, Russia, the UK and the US, drawing on historic and current examples. In doing so it addresses the jury in the state of exception, the terrorism/gang crime interface, the robustness of some jury systems and the vulnerability of others. A non-jury system is also scrutinised for comparison.

This approach eventually enables the identification of those factors which give rise to a robust jury system capable of resisting calls for its abolition, even in the difficult terrorism context.

Fergal Davis is a Senior Lecturer and ARC Laureate Fellows in Anti-Terror Laws in the Gilbert and Tobin Centre of Public Law, University of New South Wales.

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## Human Rights Acts The Mechanisms Compared

Kris Gledhill



There are now a number of statutes in different parts of the world that offer non-constitutional protection for human rights through mechanisms such as strong interpretive obligations, quasi-tort actions and obligations on legislatures to consider whether statutes are felt to breach human rights obligations. They exist in New Zealand, the United Kingdom, Ireland, the Australian Capital Territory and Victoria.

The aim of this book is to consider the jurisprudence that has developed in these various jurisdictions relating to these mechanisms for the promotion of human rights; relevant case law from countries such as Canada, South Africa and the United States that have a constitutional approach is also featured. Chapters cover such matters as the choice between a constitutional and non-constitutional bill of rights, the different approaches adopted as to how legislators are alerted to possible breaches of fundamental rights as Bills progress, the extent of the interpretive obligation, the consequences of failing to reach a rights-compliant interpretation, the remedies available in litigation and any alternatives to litigation.

The book is aimed at practitioners and also at academics and policy makers.

Kris Gledhill is a Senior Lecturer in the Law School at the University of Auckland.

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## Constitutionalism in Asia Cases and Materials

Wen-Chen Chang, Li-ann Thio,  
Kevin YL Tan and Jiunn-rong Yeh



This book is a collection of judiciously selected constitutional law materials from Asia designed for scholars and students of constitutional law and comparative constitutional law. The book is divided into 11 chapters, arranged thematically around key ideas and controversies, enabling the reader to work through the major facets of constitutionalism in the region. The book begins with a lengthy introduction that critically examines the study of constitutional orders in Asia, highlighting the histories, colonial influences, and cultural particularities extant in the region. This chapter serves both as a provisional orientation towards the major constitutional developments seen in Asia - both unique and shared with other regions - and as a guide to the controversies encountered in the study of constitutional law in Asia. Each of the following chapters is framed by an introductory essay setting out the issues and succinctly highlighting critical perspectives and themes. The approach is one of 'challenge and response', whereby questions of constitutional importance are posed and the reader is then led, by engaging with primary and secondary materials, through how the various Asian states respond to these questions and challenges. Chapter segments are accompanied by notes, comments and questions to facilitate critical and comparative analysis, as well as recommendations for further reading.

Wen-Chen Chang is Associate Professor at the College of Law, National Taiwan University.

Li-ann Thio is Professor of Law at the National University of Singapore.

Kevin YL Tan is Adjunct Professor at the Faculty of Law, National University of Singapore and Adjunct Professor at the S Rajaratnam School of International Studies, Nanyang Technological University.

Jiunn-rong Yeh is Director of the Public Law Research Centre at the National Taiwan University.

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## Administrative Law and Judicial Deference

Matthew Lewans

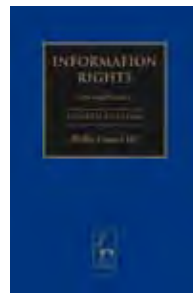
In recent years, the question whether judges should defer to administrative decisions has attracted considerable interest amongst public lawyers throughout the common law world. This book examines how the common law of judicial review has responded to the development of the administrative state in three different common law jurisdictions - the United Kingdom, the United States of America and Canada - over the past one hundred years. This comparison demonstrates that the idea of judicial deference is a valuable feature of modern administrative law, because it gives lawyers and judges practical guidance on how to negotiate the constitutional tension between the democratic legitimacy of the administrative state and the judicial role in maintaining the rule of law.

Matthew Lewans is an Assistant Professor in the Faculty of Law at the University of Alberta.

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## Information Rights Law and Practice Fourth Edition

Philip Coppel QC

This is the fourth edition of the leading practitioner's text on freedom of information law, providing in-depth legal analysis and practical guidance and complete, authoritative coverage for anyone either making, handling or adjudicating upon requests for official information. The three years since the previous edition have seen numerous important decisions from the courts and tribunals in the area. These and earlier authorities supply the basis for clear statements of principle, which the work supports by reference to all relevant cases.

The book is organised so that the practitioner can quickly locate the relevant text. It commences with an historical analysis that sets out the object of the legislation and its relationship with other aspects of public law. Full references to Hansard and other Parliamentary materials are provided. This is followed by a summary of the regime in five other jurisdictions, providing comparative jurisprudence which can assist in resolving undecided points. The potential of the HR 1998 to support rights of access is dealt with in some detail, with reference to all ECHR cases. Next follows a series of chapters dealing with rights of access under other legislative regimes, covering information held by EU bodies, requests under the Data Protection Act and the Environmental Information Regulations, public records, as well as type-specific rights of access. They introduce the practitioner to useful rights of access that might otherwise be overlooked. They are arranged thematically to ensure ready identification of potentially relevant ones.

The book then considers practical aspects of information requests: the persons who may make them; the bodies to whom they may be made; the time allowed for responding; the modes of response; fees and vexatious requests; the duty to advise and assist; the codes of practice; government guidance and its status; transferring of requests; third party consultation.

The next 13 chapters, comprising over half the book, are devoted to exemptions. The arrangement of these chapters reflects the arrangement of the FOI Act, but the text is careful to include analogous references to the Environmental Information Regulations and the Data Protection Act 1998. The analysis includes all court judgments and tribunal decisions dealing with exemptions. Whether to prepare a case or to prepare a response to a request, these chapters allow the practitioner to get on top of all exemptions rapidly and authoritatively.

The book concludes with three chapters on the role of the Information Commissioner and the Tribunal, appeals and enforcement. The Appendices include: precedent requests for information; a step-by-step guide to responding to a request; comparative tables; and a table of the FOI Act's Parliamentary history.

Finally, the book includes an annotated copy of the FOIA Act, the Data Protection Act 1998, the Environmental Information Regulations 2004, all subordinate legislation made under them, EU legislation, Tribunal rules and practice directions, and the Codes of Practice.

"It is becoming increasingly important that a guide be provided through the often murky and unexplained world of information law. The new edition ... proves to be that guide... The inclusion of comparative law throughout the book in the text and footnotes will prove a valuable source of thought-provoking material... There is no doubt that *Information Rights* is for users of the information legislative regime, not only for professional lawyers but also for ordinary requestors and public authorities.

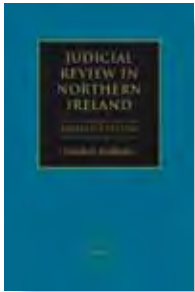
*Information Rights* is an essential addition to the bookshelves of all those who have to navigate information law. Philip Coppel and his team of authors have produced a scholarly work of intensely practical use. It is and will continue to be an invaluable guide to people who actually have to practice in the area."

CJS Knight, *Judicial Review*

Philip Coppel QC is a barrister at Landmark Chambers, specialising in public law. He is supported by an expert team of contributors.

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## Judicial Review in Northern Ireland

Second Edition

Gordon Anthony

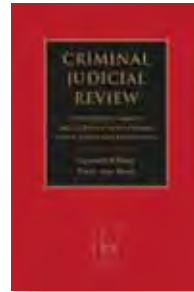
This is the second edition of Hart's leading book on the principle and practice of judicial review in Northern Ireland. Providing a fully updated account of the ever-burgeoning body of case law, it is divided into eight chapters that consider the purposes of judicial review; the nature of the public-private divide in Northern Ireland law; the judicial review procedure; the grounds for review; and remedies. As with the first edition, the focus of the book is very much on case law that is unique to Northern Ireland, and the book identifies some important differences between principle and practice in Northern Ireland and England and Wales. It also considers the leading Human Rights Act decisions of the Northern Ireland courts and the House of Lords and UK Supreme Court.

The book has been written primarily for practitioners of judicial review and uses numbered paragraphs for ease of reference. The book is, however, of much wider interest and is a valuable resource for academics and students alike. Much of the Northern Ireland case law has been concerned with contentious political issues, and the courts have had to consider difficult questions of the constitutional limits to the judicial role in review proceedings. The book should therefore be of use not just to practitioners but also to those involved in the study of judicial reasoning in different jurisdictions (both within the UK and elsewhere).

Developments that have been integrated into this edition include: the House of Lords and Supreme Court rulings in *Re E (A Child)* [2008] and *Re McCaughey* [2011]; the devolution of policing and criminal justice; case law on the judicial review of lower court decisions; judicial pronouncements on pre-action requirements and procedural law more generally; and the impact of the European Union Act 2011.

Gordon Anthony is Professor of Public Law at Queen's University Belfast, and a Barrister-at-Law. He is also a member of the European Group of Public Law, Athens.

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## Criminal Judicial Review

A Practitioner's Guide to Judicial Review in the Criminal Justice System and Related Areas

General Editor: Piers von Berg

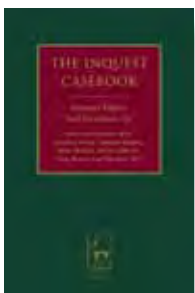
This is a comprehensive guide to challenging decisions of criminal courts and public bodies in the criminal justice system. Written by a team of criminal and public law practitioners, it considers claims for judicial review arising from criminal proceedings, which now represent a distinct area of public law. These claims are set apart by special considerations and rules; for example, on the limits of the High Court's jurisdiction or the availability of relief during on-going proceedings. Criminal practitioners may lack the background to spot public law points. Equally, public law specialists may be unfamiliar with criminal law and the types of issue that arise. *Criminal Judicial Review* is intended as a resource for both.

The book deals with the principles, case law, remedies and, the practice and procedure for obtaining legal aid and costs. It will be of assistance to any practitioner preparing judicial review claims involving the following: The Police and the Crown Prosecution Service, The Magistrates', Crown and Coroners' Courts, The Prison Service and Probation Service, Statutory bodies such as the Independent Police Complaints Commission and the Legal Aid Agency, claimants who are children, young persons or have mental health disorders, the international dimension including extradition proceedings and European Union law, and practical considerations such as CPR Part 54, remedies, legal aid and costs.

Piers von Berg is a Barrister at 36 Bedford Row.

The contributing authors are Richard Wilson QC, Rachel Taylor, Sian Cutter, Sarah Parkes, Pranjal Shrotri, James McLernon, Liam Loughlin, Florence Iveson, Geoffrey Sullivan, David Ball, Justin Leslie, Saoirse Townshend, Kathryn Howarth, Grainne Mellon and James Packer. The contributors include barristers at 36 Bedford Row, 42 Bedford Row, Garden Court, 1 Inner Temple Lane, The Smith Partnership and solicitors from Fisher Meredith and Duncan Lewis.

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## The Inquest Casebook

General Editor: Neil Garnham QC with contributions from Caroline Cross, Clodagh Bradley, Peter Skelton, Rachel Marcus, Kate Beattie, Matthew Hill

Coronial Law has grown and changed significantly in recent years. It is an area that attracts great public scrutiny, and its legal, political and social significance is reflected in the recent establishment of the office of Chief Coroner and the frequency with which Judges of the High Court and the Court of Appeal have been made deputy assistant coroners to conduct particularly sensitive inquests. In addition, the new Coroners and Justice Act came into force in 2013.

The aim of the book is to provide practitioners with summaries of relevant inquest cases in a format that is easy to search and use, and to enable them to anticipate the often unfamiliar issues that arise in coronial law.

Neil Garnham QC, Caroline Cross, Clodagh Bradley, Peter Skelton, Rachel Marcus, Kate Beattie and Matthew Hill are barristers at One Crown Office Row Chambers.

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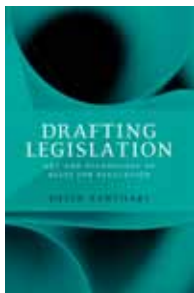


## Understanding Legislation

Charlie Potter and David Lowe



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## Drafting Legislation

### Art and Technology of Rules for Regulation

Helen Xanthaki

This book constitutes the first thorough academic analysis of legislative drafting. By placing the study of legislation and its principles within the paradigm of Flyberg's phronetic social sciences, it offers a novel approach which breaks the tradition of unimaginative past descriptive reiterations of drafting conventions. Instead of prescribing rules for legislation, it sets out to identify efficacy as the main aim of the actors in the policy, legislative, and drafting processes, and effectiveness as the main goal in the drafting of legislation. Through the prism of effectiveness as synonymous with legislative quality, the book explores the stages of the drafting process; guides the reader through structure and sections in their logical sequence, and introduces rules for drafting preliminary, substantive, and final provisions. Special provisions, comparative legislative drafting, and training for drafters complete this thorough analysis of the drafting of legislation as a tool for regulation. Instead of teaching the reader which drafting rules prevail, the book explores the reasons why drafting rules have come about, thus encouraging readers to understand what is pursued by each rule and how each rule applies. The book is aimed at academics and practitioners who draft or use statutory law in the common or civil law traditions.

Helen Xanthaki is Professor of Law and Legislative Drafting and Director of Research Studies at the Institute of Advanced Legal Studies of the University of London.

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## Constitutionalising Secession

David Haljan

*Constitutionalising Secession* proceeds from the question 'What, if anything, does the law have to say about a secession crisis?'. But rather than approaching secession through the optic of political or nationalist institutional accommodation, this book focuses on the underpinnings to a constitutional order as a law-making community, underpinnings laid bare by secession pressures. Relying on the corrosive effects of secession, it explores the deep structure of a constitutional order and the motive forces creating and sustaining that order. A core idea is that the normativity of law is best understood, through a constitutional optic, as an integrative, associative force. *Constitutionalising Secession* critically analyses conceptions of constitutional order implicit in the leading models of secession, and takes as a leading case-study the judicial and legislative response to secession in Canada. The book therefore develops a concept of constitutionalism and law-making - 'associative constitutionalism' - to describe their deep structure as a continuing, integrative process of association. This model of a dynamic process of value formation can address both the association and the disassociation of constitutional systems. *Constitutionalising Secession* concludes by examining the ramifications of this constitutional approach for the position of international law.

David Haljan is an Affiliated Senior Researcher in the Institute for Constitutional Law at the Faculty of Law, University of Leuven.

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## The Use of Foreign Precedents by Constitutional Judges

New as paperback

Edited by Tania Groppi and Marie-Claire Ponthoreau

This book is devoted to testing the reliability of studies describing and reporting instances of 'trans-judicial dialogue' between Courts. The research provides useful insights into the extent to which a progressive constitutional convergence may be taking place between Common law and Civil law traditions. The book includes studies by scholars from African, American, Asian, European, Latin American and Oceania countries, representing jurisdictions belonging to both Common law and Civil law traditions, and countries employing both centralised and decentralised systems of judicial review. The results, published here for the first time, give us the best evidence yet of the existence, and extent, of a transnational constitutional dialogue between courts.

Tania Groppi is Professor of Public Law at the University of Siena.

Marie-Claire Ponthoreau is Professeur de Droit Public, Université Montesquieu-Bordeaux IV.

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## Parliaments and Governments

Lars Hoffmann

The wider project of which this book is a part, set out to investigate the constitutional structures of the EU Member States. As part of this comparative enterprise this work sheds light on the intricate interconnections which exist between Member State governments and their national parliaments. Although in many cases governments only exist and function as a consequence of parliamentary support, it is the executive that is usually the focal point of political life and that sets the nation's political course and drives forward its legislative agenda. Arguably, this perception is based on the political customs that surround government/parliament relations rather than the constitutional fundament upon which they are built. This book therefore provides an in-depth analysis of how these two institutions, the executive and the legislature, relate to one another from a constitutional law as well as a constitutional politics perspective. To do so this the work takes a comparative approach to examining how electoral laws, government formation processes, legislative practices, executive prerogatives, and the scrutiny of EU legislation shape the role governments and parliaments play and how they interact across the EU's Member States.

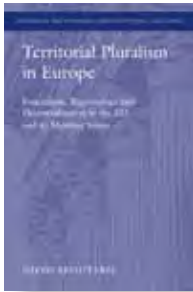
Lars Hoffmann is Assistant Professor of European and International Law at Maastricht University.

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## Territorial Pluralism in Europe Federalism, Regionalism and Decentralisation in the EU and its Member States

Nikos Skoutaris

Governmental powers can be apportioned vertically at different levels. Five levels of vertical government are distinguishable, ranging from the essentially local to the truly global. The first is local (municipal or citywide), the second substate/regional, the third the State, the fourth supranational (eg the European Union) and the fifth global, (eg the WTO and the UN). This book focuses on the second, third and fourth levels, analysing the interaction of the constitutional and political orders of EU Member States that exhibit varying degrees of territorial pluralism, their sub-state entities and the supranational organisation to which they belong. It does so by comparing the division of competences for internal policies but also for external affairs, the various models of fiscal federalism and the different systems for the effective protection of individual and collective rights within various European multi-level constitutional orders. Using a functional method of comparative constitutional law research, the book provides a timely and thought-provoking perspective on the application of the federal principle within the European constitutional space.

Nikos Skoutaris is Lecturer of EU Law at the University of East Anglia and Visiting Senior Research Fellow at the European Institute, London School of Economics.

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## Constructing European Constitutional Law

Edited by Monica Claes and  
Maartje de Visser

This book offers a deeper understanding of the dynamics and challenges faced by the ongoing development of European constitutional law. The content and form of European constitutional law are shaped by rules, principles and values found partly in European law and partly in (common) national constitutional norms and international documents, especially the ECHR. Taking the multifaceted and multidirectional nature of European constitutional law as their starting point, the essays in this book are organised around three central themes. The first draws attention to the relevance of concepts such as constitutional culture and epistemic communities and their impact on the design and execution of comparative research in this field; this is particularly useful for understanding the migration of constitutional ideas among legal orders. The second addresses the conceptualisation of European constitutional law by looking at the meaning of constitutional identity, institutional balance, democracy and the notion of the 'composite constitutional order'. The third theme is European constitutional law in action, and considers how national actors operate in this complex environment and contribute to the development of this body of law. The inclusive approach adopted in this book makes it a valuable contribution to the discourse on the complex interrelationship between European and national constitutional orders.

Monica Claes is Professor of European and Comparative Constitutional Law at Maastricht University.

Maartje de Visser is an Assistant Professor of Law at the Singapore Management University.

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## The Individual and Political Participation in the EU and its Member States

Viorelia Gasca

The preamble to the Charter of Fundamental Rights of the EU proclaims that the Union is based on the principle of democracy and 'places the individual at the heart of its activities'. This book addresses the relationship between the individual and his or her polity within the European and national constitutional frameworks. It explores the legal issues and challenges raised by interpreting such terms as 'people' or 'nation', as well as by citizenship status, electoral rights and political parties and their interconnections as the main constitutional tools of representative and participatory democracy across the EU. By examining and comparing basic legislative provisions and constitutional judgments in several Member States and the EU, it aims to identify both the homogeneous and heterogeneous features of the constitutional regimes of European countries within 'an ever closer union among the peoples of Europe'.

This book is part of the series on European and National Constitutional Law and targets a wide audience, including academics, practitioners and students interested in comparative constitutional law within the EU.

Viorelia Gasca is a Legal Researcher at Maastricht University.

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## Central-Local Relations in Asian Constitutional Systems

Edited by Andrew Harding and  
Mark Sidel

This book examines territorial governance in Asia in the context of central-local relations. In an era of attempts to deal with issues such as decentralization, conflict involving ethnic and religious enclaves, and demands for regional autonomy, it is timely to examine central-local relations in a pan-Asian perspective, assessing the attempts in a range of different systems, federal and unitary, to re-order constitutional structures for territorial governance, including local government. The book looks at the constitutional systems for organizing central-local relations of this kind and attempts to draw conclusions from contemporary experiences.

Andrew Harding is Professor of Law and Director of the Centre for Asian Legal Studies, Faculty of Law, National University of Singapore.

Mark Sidel is Doyle-Bascom Professor of Law and Public Affairs at the University of Wisconsin.

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Series: Constitutional Systems of the World: Themes





## The Constitution of Israel

### A Contextual Analysis

Suzie Navot

This book presents the main features of the Israeli constitutional system and a topical discussion of Israel's basic laws. It focuses on constitutional history and the peculiar decision to frame a Constitution 'by stages'. Following its British heritage and the lack of a formal Constitution, Israel's democracy grew for more than four decades on the principle of parliamentary supremacy. Introducing a constitutional model and the concept of judicial review of laws, the 'constitutional revolution' of the 1990s started a new era in Israel's constitutional history. The book's main themes include: constitutional principles; the legislature and the electoral system; the executive; the protection of fundamental rights; and the crucial role of the Supreme Court in Israel's constitutional discourse. It further presents Israel's unique aspects as a Jewish and democratic state and its ongoing search for the right balance between human rights and national security. Finally, the book offers a critical discussion of the development of Israel's Constitution and local projects aimed at enacting a single and comprehensive text.

Suzie Navot is a Law Professor at the Striks School of Law - College of Management Academic Studies in Israel.

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## The Constitution of Belgium

### A Contextual Analysis

Patricia Popelier and Koen Lemmens

The Belgian Constitution, once described as a model of consensus democracy, has now become an enigma in comparative federalism. On the one hand, it demonstrates features which suggest institutional instability as well as elements that enhance the probability of secession. On the other hand, Belgium continues to exist as a federal system, based upon linguistic bipolarity. This linguistic bipolarity dominates Belgian politics and has shaped the design of Belgium's institutions as well as the constitution's fundamental organizing principles: concepts of federalism, democracy, separation of powers, constitutionalism and the rule of law.

In this book, the institutional structure and the principles governing the Belgian constitutional system are explained in the light of its historical, demographic and political context. Linguistic bipolarity and its historical evolution explain the establishment of the Belgian state structure as a dual federalism, with exclusive powers, instruments for consensus making and obstruction, and elements of con-federal decision-making. It also explains the evolution in the concept of principles of democracy and the rule of law. Besides describing the devolutionary process, the book also incorporates two other elements that have shaped the Belgian constitutional landscape: fundamental rights and Europeanisation, both of which have been influenced by and impacted on Belgium's bipolar constitutional structure.

Patricia Popelier is Professor of Constitutional Law at the University of Antwerp and Head of the Research Group on Government and Law.

Koen Lemmens is Associate Professor of Human Rights at the Catholic University of Louvain.

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## The Constitution of Canada

### A Contextual Analysis

Jeremy Webber

The book introduces and describes the principal characteristics of the Canadian Constitution, including Canada's institutional structure and the principal drivers of Canadian constitutional development. The Constitution is set in its historical context, noting especially the complex interaction of national and regional societies that continues to shape the Constitution of Canada. The book argues that aspects of the Constitution are best understood in 'agonistic' terms, as the product of a continuing encounter or negotiation, with each of the contending interpretations rooted in significantly different visions of the relationship among peoples and societies in Canada. It suggests these agonistic relationships have, to a limited extent, found expression in distinctive doctrines of Canadian constitutional law and how these doctrines represent approaches to constitutional legality that may be more widely applicable. As such the book charts the Canadian expression of trans-societal constitutional themes: democracy; parliamentarism; federalism; and human rights, and describes the institutional structure that has resulted from the interplay of these themes.

Jeremy Webber is Canada Research Chair in Law and Society at the University of Victoria, British Columbia.

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## The Constitution of Singapore

### A Contextual Analysis

Kevin YL Tan

Singapore's Constitution was hastily cobbled together after her secession from the Federation of Malaysia in 1965. In the subsequent 45 years, the Constitution has been amended many times to evolve a Constitution like no other in the world. Outwardly, Singapore has a Westminster-type constitutional democracy, with an elected legislature, fundamental liberties and safeguards to ensure the independence of the judiciary. On closer inspection, the Constitution displays many innovative and unusual characteristics. Most notable among them are the various types of Members of Parliament that have been introduced since the mid-1980s, the office of the Elected President and the fact that there is no constitutional right to property. This volume seeks to explain the nature and context of these constitutional innovations in the context of a pluralistic, multi-ethnic state obsessed with public order and security. The volatile racial mix of Singapore, with its majority Chinese population nestled in a largely Malay/Islamic world compels the state to search for ethnic management solutions through the Constitution to guarantee to the Malays and other ethnic minorities their status in the polity. In addition, it examines how the concept of the rule of law is perceived by the strong centrist state governed by a political party that has been in power since 1959 and continues to hold almost hegemonic power.

Kevin YL Tan is currently Adjunct Professor at the Faculty of Law, National University of Singapore and also at the S Rajaratnam School of International Studies, Nanyang Technological University.

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## The Constitutional Systems of the Commonwealth Caribbean

A Contextual Analysis

Derek O'Brien

The Commonwealth Caribbean comprises a group of countries (mainly islands) lying in an arc between Florida in the North and Venezuela in the South. Varying widely in terms of their size, population, ethnic composition and economic wealth, these countries are, nevertheless, linked by their shared experience of colonial rule under the British Empire and their decision to adopt a constitutional system of government based on the Westminster model. Since independence these countries have, in the main, enjoyed a sustained period of relative political stability, in marked contrast to the experience of former British colonies in Africa and Asia. This book seeks to explore how much of this is due to their constitutional arrangements by examining the constitutional systems of these countries in their context and questioning how well the Westminster model of democracy has successfully adapted to its transplantation to the Commonwealth Caribbean. The book also addresses the resurgence of interest in constitutional reform across the region, culminating in demands for radical reforms of the Westminster model of government and the severance of all remaining links with colonial rule.

Derek O'Brien is a Principal Lecturer in Law at Oxford Brookes University.

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## The Protection of Legitimate Expectations in Administrative Law

A Comparative Study

Edited by Anneken Kari Sperr and Diana Princess of Hohenlohe-Oehringen

The protection of legitimate expectations appears to be a key concept of administrative law in Europe; it defines the legal position of the individual vis-à-vis the public authorities and is, thus, a gateway for constitutional considerations in administrative law.

The book presents the results of a comparative research project dealing with the question if, to what extent, and in which ways the legitimate expectations of private parties are considered in procedures leading to a primary administrative decision and, where available, in subsequent review procedures before administrative, judicial or quasi-judicial bodies. Furthermore, the project examines if, and to what extent, European and national legal orders, as well as international legal regimes, guarantee compensation in cases where provisions concerning the protection of legitimate expectations have been disregarded.

The contributions to the book, including surveys of the theoretical and philosophical background, country reports and comparative analyses, are written by scholars from 16 European countries, giving an insight into the various legal systems, their understanding of, and their methods of interpreting and applying, administrative law.

Anneken Kari Sperr is Associate Professor at the Faculty of Law, University of Bergen.

Diana Princess of Hohenlohe-Oehringen is Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg.

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Series: Hart Studies in Comparative Public Law



## Debates in German Public Law

Edited by Hermann Pünder and Christian Waldhoff

Germany's Constitution - the Basic Law of 23rd May 1949 - created a democratic constitution which, despite amendments, has held up over the years, even providing the legal basis for German reunification in 1990. When it was written the Basic Law was initially regarded as a temporary solution which would last until a pan-German constitution could be created, but over the years it has grown to become a mainstay of post-war stability and has even become one of Germany's most successful exports. Foreign scholars are particularly interested in the German conception of fundamental rights and the mechanisms in place for enforcing them in the courts, as well as in Germany's federal structure. Making and applying administrative law and working alongside the system of EU law are also subjects of great interest.

This book, developed by a group of scholars in honour of the 60th anniversary of the Basic Law, presents examples of fundamental aspects of current scholarly debate. The analyses found in this book present the latest scholarly discussions, specifically for a foreign audience, touching upon constitutional law, administrative law and the place of the Federal Republic within the system of European Community law, with constitutional law providing the constant framework.

Hermann Pünder is Professor of Law at the Bucerius Law School, Hamburg. Christian Waldhoff is Professor of Law at the Humboldt University, Berlin.

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# Consumer Law



## European Consumer Law

Stefan Leible

This new book covers one of the areas of European law which has been a constant and vital part of the European Commission's vision for the creation of a Single Market. With new developments - particularly in online commerce and online consumer finance - making consumer law an ever-more challenging area for consumers and legislators alike, and with the difficulties of cross-border enforcement of court orders becoming a growing issue for the EU, the need for up-to-date coverage of the subject has never been more keenly felt. This handbook covers all the key areas of EU Consumer Law.

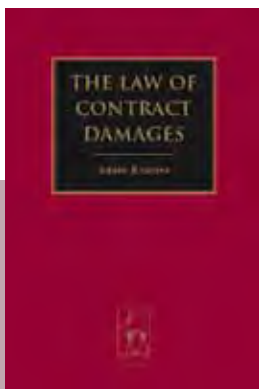
**Stefan Leible** is Professor and Chair of Civil Law at the University of Bayreuth.

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# Contract, Tort, Restitution and Commercial Law



## The Law of Contract Damages

Adam Kramer with a foreword by Lord Hoffman

This is the first work to concentrate solely on damages for breach of contract and provides the most comprehensive and detailed treatment of the subject to date. Written by a commercial barrister and academic for both practitioners and scholars, this text explores the familiar principles and the more recent developments of those principles. To assist understanding and practicality, much of the book is arranged by reference to the type of the complaint (such as the mis-provision of services, the non-payment of money, or the temporary loss of use of property), rather than by the more traditional subject-matter specialisms (eg sale of goods, charterparties, surveyor's negligence). Tort decisions are drawn on to the extent that the applicable principles are the same as or usefully similar to those in contract, and there is also detailed coverage of many practically important but often neglected areas, such as damages for lost management time and the proper evidential approach to proving lost profits.

**Adam Kramer** is a Barrister at 3 Verulam Buildings and a former lecturer at the Universities of Durham and Oxford.

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## The Assignment of Contractual Rights

Second Edition

Greg Tolhurst

*The Assignment of Contractual Rights* is a thesis driven work explaining the existence, meaning and application of the rules governing the assignment of contractual rights. The second edition is updated and retains the structure of the first edition focusing on what is meant by "assignment", what is the distinction between legal and equitable assignments, how an assignable contractual right is identified, what formalities apply to assignment and what rights and remedies are available to the parties to an assignment.

"...it is essential reading for ... teachers, especially those who teach contract, equity and personal property. Above all, it should always be consulted - read carefully, slowly and repeatedly - by any practitioner facing an assignment problem.... It belongs to the tradition which finds the sources of the law in the decisions made by judges in deciding particular cases - a tradition which naturally appeals to those who have to appear before those judges in seeking a resolution to controversies in which their clients have become involved.... Within that broad tradition, however, this work achieves an unusual level of distinction and value. It is not only the best book ever written on its subject, but among the best monographs dealing with legal doctrine published in recent years"

The Hon JD Heydon, *Sydney Law Review*

Greg Tolhurst is Professor of Commercial Law at the University of Sydney, Faculty of Law, and Consultant to Herbert Smith Freehills, Sydney.

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## Contractual Indemnities

Wayne Courtney

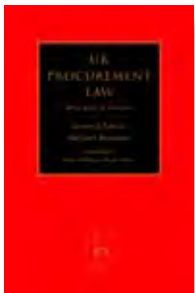
Promises of indemnity are found in many kinds of commercial contracts, not just contracts of insurance. This book examines the nature and effect of contractual indemnities outside the insurance context. It is the first work to provide a detailed account of the subject in English law.

The book presents a coherent theory of the promise of indemnity, while also addressing important practical issues, such as the construction of contractual indemnities. The subject is approached from two perspectives. The foundations are laid by examining general principles applicable to indemnities in various forms. This covers the nature of indemnity promises; general principles of construction; the determination of scope; and the enforcement of indemnities. The approach then moves from the general to the specific, by examining separately particular forms of indemnity. Included among these are indemnities against liability to third parties, and indemnities against default or non-performance by third parties.

The book states English law but it draws upon a considerable amount of material from other common law jurisdictions, including Australia, Canada, New Zealand and Singapore. It will appeal to readers from those countries.

Wayne Courtney is a Senior Lecturer in the Faculty of Law at the University of Sydney.

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## UK Procurement Law

Principles & Practice

General Editor: Michael Bowsher

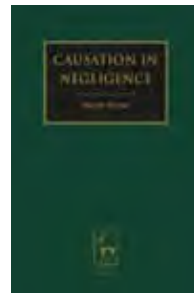
Contributors: Elisa Holmes and

Ewan West

Procurement law has become a key area of professional practice in the United Kingdom as authorities and utilities are held to account to a complex web of legislative rules, judicial principles and "soft law". The authors, members of Monckton Chambers, have extensive day-to-day experience in this field dealing both with the operation of the procurement process and the regulatory and judicial routes for challenging procurement procedures. The book covers the current state of law and practice in the field of procurement law. Particular focus is placed on the procedural content of procurement law challenges and separate focus is given to the position in Scotland and Northern Ireland where local law issues often shape the impact of procurement law. Previous textbooks have taken the legislation as their starting point but in this book the authors demonstrate that an approach to procurement law may be taken in which the key obligations are those imposed by general principles. The real enforcement challenge involves establishing clear rules based on these principles, often in the context of intense judicial scrutiny, in which the procedural demands of the procurement and the courts shape the law.

Michael Bowsher QC is a barrister at Monckton Chambers, where he practices in commercial and EU law.

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## Causation in Negligence

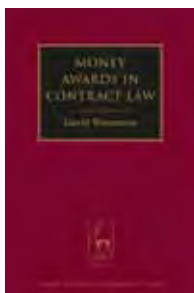
Sarah Green

The principal objective of this book is simple: to provide a timely and effective means of navigating the current maze of case law on causation, in order that the solutions to causal problems might more easily be reached, and the law relating to them more easily understood. The need for this has been increasingly evident in recent judgments dealing with causal issues: in particular, it seems to be ever harder to distinguish between the different 'categories' of causation and, consequently, to identify the legal test to be applied on any given set of facts.

*Causation in Negligence* will make such identification easier, both by clarifying the parameters of each category and mapping the current key cases accordingly, and by providing one basic means of analysis which will make the resolution of even the thorniest of causal issues a straightforward process. The causal inquiry in negligence seems to have become a highly complicated and confused area of the law. As this book demonstrates, this is unnecessary and easily remedied.

Sarah Green is a CUF Lecturer and Fellow and Tutor in Law of St Hilda's College, Oxford.

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## Money Awards in Contract Law

David Winterton

The quantification of money awards for breach of contract is a topic of both significant theoretical interest and immense practical importance. Recent debates have ranged from the availability of gain-based awards to the theoretical basis for principles of remoteness and mitigation. While these and other important issues, such as the recovery of compensation for non-pecuniary loss, are touched upon, the book's principal objective is to challenge the orthodox understanding of the expectation principle, as famously laid down by Parke B in *Robinson v Harman*. According to this understanding, the usual objective of money awards for breach of contract is to compensate for 'loss' suffered by reference to the position the innocent party would have occupied had the contract been performed. After challenging this orthodoxy, Dr Winterton proposes a new account of the money awards provided in response to breach of contract which draws an important distinction between substitutionary and compensatory awards. In exploring this distinction, the book examines the principles underpinning the quantification and restriction of both kinds of award, as well as certain theoretical issues such as the relationship between contractual rights and remedies, and the legitimacy of English law's approach towards the availability of coercive relief. The book's unifying objective is to provide a coherent picture of contractual rights and remedies. It will be of interest to judges, practitioners and academics alike.

David Winterton is a Lecturer in Law at the University of New South Wales.

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Series: Hart Studies in Private Law



## Contract Law and Contract Practice

Bridging the Gap Between Legal Reasoning and Commercial Expectation

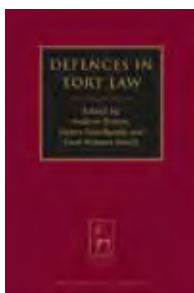
Catherine Mitchell

An oft-repeated assertion within contract law scholarship and cases is that a good contract law (or a good commercial contract law) will meet the needs and expectations of commercial contractors. Despite the prevalence of this statement, relatively little attention has been paid to why this should be the aim of contract law, how these 'commercial expectations' are identified and given substance, and what precise legal techniques might be adopted by courts to support the practices and expectations of business people. This book explores these neglected issues within contract law. It examines the idea of commercial expectation, identifying what expectations commercial contractors may have about the law and their business relationships (using empirical studies of contracting behaviour), and assesses the extent to which current contract law reflects these expectations. It considers whether supporting commercial expectations is a justifiable aim of the law according to three well-established theoretical approaches to contractual obligations: rights-based explanations, efficiency-based (or economic) explanations and the relational contract critique of the classical law. It explores the specific challenges presented to contract law by modern commercial relationships and the ways in which the general rules of contract law could be designed and applied in order to meet these challenges. Ultimately the book seeks to move contract law beyond a simple dichotomy between contextualist and formalist legal reasoning, to a more nuanced and responsive legal approach to the regulation of commercial agreements.

Catherine Mitchell is a Reader in Law at the University of Hull.

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## Defences in Tort Law

Edited by Andrew Dyson, James Goudkamp and Fred Wilmot-Smith

This book is the first in a series of essay collections on defences in private law. The series offers a systematic treatment of defences as a connected field. Contributions from some of the world's pre-eminent jurists and scholars provide insights from several common law jurisdictions. The present collection explores the links between tort law defences on a theoretical level, and examines the nature and scope of individual defences. It will be of value to academics and practitioners alike.

Andrew Dyson is a Lecturer in Law at Corpus Christi College, Oxford.

James Goudkamp is a Fellow of Balliol College, Oxford, and CUF Lecturer in the Faculty of Law, University of Oxford.

Fred Wilmot-Smith is a Prize Fellow at All Souls College, Oxford, and Lecturer in Law at Balliol College.

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Series: The Limits of Liability



## Accessory Liability

Paul S Davies

Accessory liability in the private law is of great importance. Claimants often bring claims against third parties who participate in wrongs. For example, the 'direct wrongdoer' may be insolvent, so a claimant might prefer a remedy against an accessory in order to obtain satisfactory redress. However, the law in this area has not received the attention it deserves. The criminal law recognises that any person who 'aids, abets, counsels or procures' any offence can be punished as an accessory, but the private law is more fragmented. One reason for this is a tendency to compartmentalise the law of obligations into discrete subjects, such as contract, trusts, tort and intellectual property. This book suggests that by looking across such boundaries in the private law, the nature and principles of accessory liability can be better understood and doctrinal confusion regarding the elements of liability, defences and remedies resolved.

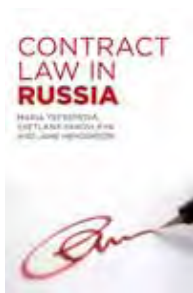
Paul S Davies is a University Lecturer in Law at the University of Oxford and a Fellow of St Catherine's College, Oxford.

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## Contract Law in Russia

Maria Yefremova, Svetlana Yakovleva and Jane Henderson



The book explains Russian contract law in a form understandable to lawyers qualified in other countries, especially common law countries. The introduction gives a concise overview of the Russian legal system in general and contract law in particular as well as a brief insight into the history of contract law in Russia. Then the main concepts of Russian contract law are explained, using the conceptual framework of English contract law to make them accessible to someone not familiar with the codified Russian system.

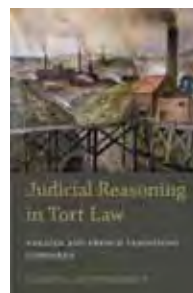
The book considers the legislation regulating Russian contractual relations and includes appropriate case law to show how the legislation is interpreted. It will be directly relevant to legal practitioners and others who have to deal with Russian law, and those who wish to acquire knowledge of the practical application of an important element of the Russian legal system, as well as those seeking an insight into the realities of codified law in action. It will also be of interest to academics and students working on Russian law, the law of contract and comparative civil law, as well as scholars of comparative legal systems and Russian area studies.

Maria Yefremova and Svetlana Yakovleva are managing partners of Yefremova & Yakovleva, Legal services LLC. Previously, Maria worked for the Moscow office of White & Case LLC and Svetlana worked for the Moscow office of Debevoise & Plimpton LLP.

Jane Henderson is Senior Lecturer in Law at King's College London and an Adjunct Professor at the Notre Dame Law School in London.

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## Judicial Reasoning in Tort Law

English and French Traditions Compared

Dorota Leczykiewicz

The book examines the practice of judicial reasoning in Tort law, understood as a process of justification, consisting of both deductive and non-deductive elements, and therefore involving a significant element of choice or discretion. The book divides the elements of judicial reasoning into four conceptual categories: factual assessments, application of legislative and judge-made rules, reliance on reasonableness, and policy considerations. To discuss these elements in a comparative perspective the book uses the English and French judicial traditions of Tort law as case studies. This enables the author to present a range of methods of establishing facts, drawing inferences, using legal sources and relying on policy arguments. By closely examining selected Tort judgments from both jurisdictions, the book elucidates the phenomenon of law-making through adjudication in both a non-codified and a codified system of liability. It offers a reflection on different approaches legal systems may adopt to the importance in the process of judicial justification of such issues as certainty and truth, common sense, consistency with previous judicial decisions and policy. The book connects the choice of approaches in judicial reasoning in Tort law with its procedural and institutional context.

Dorota Leczykiewicz is Leverhulme Trust Early Career Fellow in the Faculty of Law and a Fellow of Trinity College, University of Oxford.

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## Edelman and Bant's Unjust Enrichment

James Edelman and Elise Bant



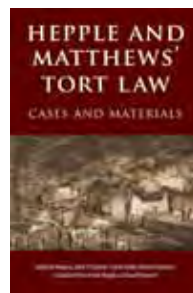
Unjust enrichment is one of the least understood areas of private law. This book builds upon the 2006 work by the same authors which was entitled *Unjust Enrichment in Australia*. The scope of the book is now broader. It concerns the principles of the law of unjust enrichment in Australia, New Zealand, England and Canada. Major decisions of the highest courts of these jurisdictions in the last decade provide a fertile basis for examining the underlying principles and foundations of this subject. The book uses the leading cases to distil and explain the fundamental principles of this branch of private law.

James Edelman, now a Justice of the Supreme Court of Western Australia, was formerly Professor of the Law of Obligations at Oxford University.

Elise Bant is a Professor of Law at the University of Melbourne Law School and Honorary Fellow (and former Senior Lecturer) at The University of Western Australia.

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## Hepple and Matthews' Tort Law

Cases and Materials

Seventh Edition

Jonathan Morgan, Janet O'Sullivan, Stelios Tofaris, Martin Matthews  
Consultant Editors: Bob Hepple and David Howarth



This is the seventh edition of the classic casebook on Tort, the first of its kind in the UK, and for many years now a bestselling and very popular text for students. This new edition retains all the features that have made it such a popular and respected text, with extensive commentary, questions and notes supplementing the selection of cases and statutes which form the core of the book. Taking a broadly contextual approach the book addresses all the main topics in tort law, is up-to-date, doctrinally sound, stimulating and highly readable.

Jonathan Morgan is a University Lecturer in Tort Law and Fellow of Corpus Christi College, Cambridge.

Janet O'Sullivan is a University Senior Lecturer and Fellow of Selwyn College, Cambridge.

Stelios Tofaris is a Barrister and College Lecturer in Law at Girton College, Cambridge.

Martin Matthews is a former CUF Lecturer in Law at the University of Oxford, and a Fellow of University College.

Sir Bob Hepple QC is Emeritus Professor of Law and Emeritus Master of Clare College, Cambridge.

David Howarth is a Reader in Law in the Department of Land Economy, and Fellow of Clare College, Cambridge.

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## The Europeanisation of English Tort Law

Paula Giliker

Tort law is often regarded as the clearest example of common law reasoning. Yet, in the past 40 years, the English common law has been subject to European influences as a result of the introduction of the European Communities Act 1972 and the Human Rights Act 1998. EU Directives have led to changes to product liability, health and safety law, and defamation, while *Francovich* liability introduces a new tort imposing State liability for breach of EU law. The 1998 Act has led to developments in privacy law and forced courts to reconsider their approach to public authority liability and freedom of expression in defamation law.

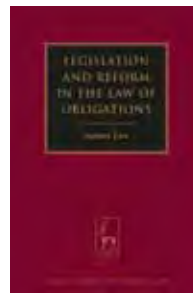
This book has two goals: to identify how English tort law has changed as a result of Europeanisation - broadly defined as the influence of European Union and European human rights law - and to examine how such developments have impacted on traditional common law reasoning. Has Europeanisation led to changes to the common law legal tradition or has the latter proved more resistant to change than might have been expected?

Paula Giliker is Professor of Comparative Law at the University of Bristol, where she teaches comparative law, tort law and European private law.

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Series: Hart Studies in Private Law



## Legislation and Reform in the Law of Obligations

James Lee

This book presents a study of the ways in which legislation shapes and develops the law of obligations. Currently, the role which legislation plays in the laws of tort, contract and unjust enrichment is under-theorised, and yet it is increasingly significant, both in its own right and as the focus of decisions at the highest appellate levels. The book offers a comparative account of the law in England and Wales and Australia, drawing on the experiences of the Australian states under their various recent Civil Liability Acts. There are various constitutional restrictions on the extent to which legislation may interfere with existing private law rights, and the book examines the applicable jurisprudence in the contexts of European, human rights and Australian constitutional law.

Developing a coherence-based approach, it is argued that the processes of legislation ought to involve more faithful engagement with the applicable principles than is often the case. The book addresses particular problems such as the application of limitations statutes, the scope of purportedly exclusive legislative schemes and the question of when a change in the law of obligations ought to be left to the legislature. The book argues that respect for coherence is not merely a matter of doctrinal purity, but also translates into more effective legislation.

James Lee is a Lecturer in Law at the University of Birmingham and an Academic Fellow of the Honourable Society of the Inner Temple.

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## Markesinis and Unberath's German Law of Torts

Fifth Edition

Senior Editor: Basil Markesinis with  
Jörg Fedtke and Angus Johnston

Since its first appearance in 1986 this book has won uniform praise from many of the world's leading comparatists, has been acclaimed by senior judges, and has been cited by the courts of many countries. This new edition of the work, again substantially updated, contains over 150 leading judgments, most translated in their entirety, along with references to over 2000 other decisions from Germany and the common law world. While the book remains an ideal tool for teaching comparative torts and comparative methodology, it is also an indispensable source of inspiration for those with a professional interest in international tort litigation and law reform in the area.

Topics discussed include economic loss, psychiatric injury, wrongful birth, life and sterilisation cases, products liability, traffic accidents, accidents at work, environmental liability, and compensation for personal injuries and death.

Sir Basil Markesinis QC FBA is Jamail Regents Chair in Law at the University of Texas at Austin.

Jörg Fedtke is AN Yiannopoulos Professor in Comparative and International Law at Tulane University and Co-Director of Tulane's Eason-Weinmann Center for Comparative Law.

Angus Johnston is Senior Law Fellow and CUF at University College at the University of Oxford.

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## Rights and Private Law

New as Paperback

Edited by Donal Nolan and  
Andrew Robertson

This collection will make a very significant contribution to debate about the role of rights in private law. It includes essays by leading private law scholars addressing fundamental questions about rights in private law as a whole and within particular doctrines and fields of private law. The book encompasses both advocates and critics of rights-based approaches and provides a thorough and well-balanced analysis of the topic.

Donal Nolan is the Porjes Foundation Fellow and Tutor in Law at Worcester College, University of Oxford.

Andrew Robertson is a Professor of Law at the University of Melbourne.

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## **International Sales Terms** Second Edition

Patrick Ostendorf

This is a short practical guide to international sales terms, providing a handy guide for drafting typical sales agreement clauses. The introductory chapter provides a short introduction to the United Nations Convention on Contracts for the International Sale of Goods (CISG). The introductory part also deals with more general points of concern with regard to international sales contracts and best practices regarding the incorporation of the terms into the contract (the battle of forms problem). The main part of the book contains the annotated international

sales terms and conditions. The contents of each clause and its effect in the context of the applicable law are separately discussed and analysed. The second edition of this book incorporates inter alia more recent changes in relation to relevant statutory provisions of the suggested governing laws and available trade terms and provides updated contract terms as well as revised annotations. Against the background of the ongoing European sovereign debt crisis, the second edition also discusses potential contractual tools to limit the risk exposure of exporters in case individual Member States should leave the Euro zone. Further new features comprise of a short introduction into the proposed Common European Sales Law (CESL) as a potential alternative legal framework for the CISG in the future as well as the meaning and impact of indemnity clauses in sales contracts.

Patrick Ostendorf is Professor of Commercial Law at the University of Applied Studies, Bielefeld, and Of Counsel in the law firm Orth Kluth in Düsseldorf.

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# Copyright, Patents, Trademarks



## **Digital Copyright** Law and Practice Fourth Edition

Simon Stokes

The first edition of this book in 2002 was the first UK text to examine digital copyright together with related areas such as performers' rights, moral rights, database rights and competition law as a subject in its own right. Updated editions have included the UK implementation of the 2001 Copyright Directive and commentary on user-generated content and the development of Web 2.0 and beyond. Now in its fourth edition, the book has been updated and revised to take account of legal and policy developments in copyright law and related areas, in particular the increasing role of the European Court of Justice in shaping EU copyright law.

The book helps put digital copyright law and policy into perspective and provides practical guidance for those creating or exploiting digital content or technology, whether in academia, the software, information, publishing and creative industries, and other areas of the economy. The focus is on the specifics of the law in this area together with practical aspects, including precedents and precedent checklists dealing with common digital copyright transactions. The latest edition has been expanded to include a discussion of Open Access, eBooks and App development and licensing. Both academics and practitioners will find the book an invaluable guide to this rapidly developing field of law.

**Simon Stokes** is a solicitor and a partner with Blake Lapthorn in London and a Visiting Research Fellow at Bournemouth Law School.

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## The European Trade Mark Convention and European Design Convention

### A Commentary

Edited by Gordion Hasselblatt

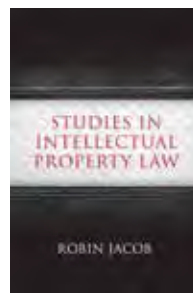
The Community trade mark gives its proprietor a uniform right applicable in all Member States of the European Union on the strength of a single procedure which simplifies trade mark policies at European level. The European Designs Convention harmonises the requirements for registered design protection in EU Member States and was incorporated into UK law on 9 December 2001. Together these two instruments provide far-reaching and powerful IP protection for designers, manufacturers and innovators. This new work provides a detailed commentary on the two Conventions, explaining their legal force and significance.

Gordion Hasselblatt is partner in the law firm CMS Hasche, Cologne, and Professor of Law at the McGeorge Law School, University of the Pacific and Chicago-Kent College of Law.

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## Studies in Intellectual Property Law

Robin Jacob

The Rt Hon. Professor Sir Robin Jacob has been variously a leading member of the IP Bar, a High Court judge and, as Lord Justice Jacob, a judge in the Court of Appeal of England and Wales. His primary area of expertise is intellectual property rights. He retired from the Court of Appeal in March 2011 to take up his current position as the Sir Hugh Laddie Chair in intellectual property at University College London, though still sits occasionally as a judge in the High Court and the Court of Appeal and is a door tenant at 8 New Square Chambers. These essays, selected from his published and unpublished writings, illustrate the breadth of his learning, and are written in typically straightforward and entertaining style. They will be of interest to any lawyer, law student, or scholar interested in the development of IP law in the past quarter century.

The Rt Hon. Professor Sir Robin Jacob is the Sir Hugh Laddie Professor of Intellectual Property Law at University College London and a door tenant at 8 New Square Chambers.

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## Patent Litigation in Germany, Japan and the United States

### A Handbook

Johannes Pitz, Atsushi Kawada and Jeffrey A Schwab

This book gives a systematic comparative overview of the characteristic principles of patent enforcement proceedings in the US, Japan and Germany, ie the major jurisdictions where patent holders might seek for legal remedies in parallel proceedings.

Each chapter consists of a survey of the relevant law, guidance on how to characterise infringements, guidance on how to frame a claim and how to defend against such a claim, pre-litigation procedure, the conduct of infringement proceedings and the main principles of procedure.

Johannes Pitz is an Attorney at Law and a patent litigator in Munich.

Atsushi Kawada is an Attorney at Law, and patent and trade mark Attorney.

Jeffrey A Schwab is a Patent Attorney who specialises in IP litigation, licensing, ADR and advertising law, New York.

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## The EU Unitary Patent System

Edited by Justine Pila and Christopher Wadlow

The purpose of this book is to explore the key substantive, methodological, and institutional issues raised by the proposed EU unitary patent system contained in EU Regulations 1257/2012 and 1260/2012, and the Unified Patent Court Agreement 2013. The originality of this work lies in its uniquely broad approach, taking seven different (historical, constitutional, international, competition, economic, institutional, and forward-looking) perspectives on the proposed EU patent system. This means that the book offers a multi-authored and all round appraisal of the proposed unitary system from experts in patent law, EU constitutional law, private international law, competition law, and economics, as well as leading figures from the worlds of legal practice, the bench, and the European Patent Office. The unitary patent system raises issues of foundational importance in the fields of patent and intellectual property law, EU law and legal harmonization, which it is the purpose of the book to engage with.

This is a work which will enjoy wide and enduring interest among academics, policy makers and decision makers/practitioners working in patent law, intellectual property law, legal harmonization, and EU law.

Justine Pila is University Lecturer in Intellectual Property Law, Senior Law Tutor and College Counsel at St Catherine's College, Oxford.

Christopher Wadlow is a Professor of Law at the University of East Anglia.

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## Unified Patent Court

### A Commentary

Christof Augenstein, Sabine Agé and Alex Wilson

Forty years after the first discussions began with a view to creating a single European patent, 25 EU Member States (with the exception of Italy, Spain and Croatia) approved three instruments creating a European Patent with unitary effect. One of the instruments is the Agreement on a Unified Patent Court, signed on 19 February 2013. The Agreement provides for a Unified Patent Court (UPC) as a single court consisting of a Court of First instance and a Court of Appeal. The court will have exclusive jurisdiction both in infringement and revocation proceedings. By this means it is intended that it will provide a less complex and cheaper alternative to the current situation where patent cases have to be tried in each EU Member State separately.

This commentary is focused on the procedure of the Unitary Patent Court, and covers infringement and defences, proceedings and the UPC, Statutes of the UPC, financial provisions, general provisions, languages of proceedings, proceedings before the Court, powers of the Court, appeals, decisions, implementation and operation of the agreement.

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## Pharmaceutical, Biological and Chemical Patents

### A Handbook

Maximilian Haedicke, Marco Stief and Dirk Bühler

The topic of chemical and biological patents is of special importance in European and German law. The highly technical nature of these patents gives rise to special problems for patent lawyers in understanding, for instance, structural alterations like polymorphism and enantiomerism, and the circumstances in which such alterations are to be treated either as novel or as part of the state of the art. Natural occurrences of a substance, its accessibility and bioethics, is also a problem for patent law, as is the difficulty of understanding how different identifications of a substance and the resulting patents are interrelated.

This publication provides an expert overview of all these questions. As most legal proceedings concerning chemical and biological patents have involved German courts it is fitting that the book is authored by two German experts, and this is particularly so as the German jurisprudence has often been the basis for decisions of the ECJ.

Maximilian Haedicke is Professor of Intellectual Property Law at the University of Freiburg.

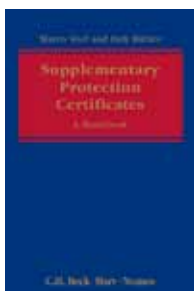
Marco Stief is Director Legal in the Legal Department of Fresenius, Bad Homburg.

Dirk Bühler is patent attorney and partner in Maiwald Patentanwälte in Munich.

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## Supplementary Protection Certificates

### A Handbook

Edited by Marco Stief and Dirk Bühler

The supplementary protection certificate (SPC) prolongs the term of patents for pharmaceutical products for a maximum of five additional years. The SPC's legal bases are two European SPC Regulations and the SPC is based upon European or national patents. SPCs protect some of the most valuable products in the pharmaceutical industry where each day of additional protection may be worth millions of Euros. Despite the economic relevance SPCs have obtained in recent years, there exists only limited detailed literature on the subject. German jurisprudence on SPCs is of special importance, as this has often been the basis for decisions of the ECJ and the German market is one of the leading markets for pharmaceuticals and thus for SPCs.

This book is addressed to patent attorneys, in particular in-house and external, working for pharmaceutical companies, and attorneys-at-law specialising in patent law, especially in Europe but essentially worldwide.

Marco Stief is Director Legal in the Legal Department of Fresenius, Bad Homburg, Germany.

Dirk Bühler is patent attorney and partner in Maiwald Patentanwälte in Munich, Germany.

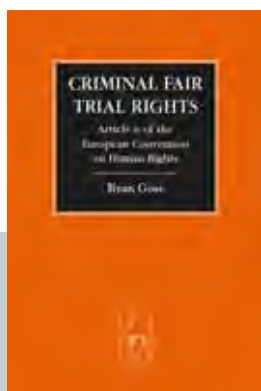
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# Criminal Law



## Criminal Fair Trial Rights

### Article 6 of the European Convention on Human Rights

Ryan Goss

The Article 6 fair trial rights are the most heavily-litigated Convention rights before the Strasbourg Court, generating a large and complex body of case law. With this book, Goss provides an innovative and critical analysis of Strasbourg's Article 6 case law. The category of 'fair trial rights' includes many component rights. The existing literature tends to chart the law with respect to each of these component rights, one by one. This traditional approach is useful, but it risks artificially isolating the case law in a series of watertight compartments.

This book takes a complementary but different approach. Instead of analysing the component rights one by one, it takes a critical look at the case law through a number of 'cross-cutting' problems and themes common to all or many of the component rights. For example: how does the Court view its role in Article 6 cases? When will the Court recognise an implied right in Article 6? How does the Court assess Article 6 infringements, and when will the public interest justify an infringement?

The book's case-law-driven approach allows Goss to demonstrate that the Court's Article 6 jurisprudence is marked by considerable uncertainty, inconsistency, and incoherence.

**Ryan Goss** is Lecturer in Law at the Australian National University, Canberra, and was formerly Junior Research Fellow in Law at Lincoln College, Oxford.

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## Liberal Criminal Theory

### Essays for Andreas von Hirsch

Edited by AP Simester, Ulfrid Neumann  
and Antje du Bois-Pedain

of a liberal criminal justice system, and present a fitting accolade to Andreas von Hirsch's scholarly life.

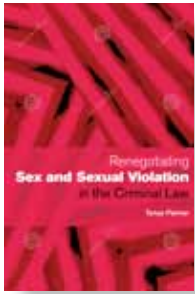
AP Simester is Professor of Law and Provost's Chair at the National University of Singapore, an Honorary Research Fellow at the Institute of Criminology, University of Cambridge, and Honorary Professor in Law at Uppsala University.

Ulfrid Neumann is Professor of Criminal Law, Criminal Procedure, Legal Theory and Sociology of Law at the Goethe-University in Frankfurt.

Antje du Bois-Pedain is a University Senior Lecturer at the Faculty of Law, University of Cambridge, and a Fellow of Magdalene College, Cambridge.

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| Hbk                            | 9781849465144 | 346pp | Aug 14 | £50 | €58.50 | US\$90 |
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This book celebrates Andreas (Andrew) von Hirsch's pioneering contributions to liberal criminal theory. He is particularly noted for reinvigorating desert-based theories of punishment, for his development of principled normative constraints on the enactment of criminal laws, and for helping to bridge the gap between Anglo-American and German criminal law scholarship. Underpinning his work is a deep commitment to a liberal vision of the state. This collection brings together a distinguished group of international authors, who pay tribute to von Hirsch by engaging with topics on which he himself has focused. The essays range across sentencing theory, questions of criminalisation, and the relation between criminal law and the authority of the state. Together, they articulate and defend the ideal



## Renegotiating Sex and Sexual Violation in the Criminal Law

Tanya Palmer

What is the difference between sex and sexual violation? This book explores the boundary between these two concepts via a theoretical examination of the values and interests at stake in sexual encounters, combined with empirical research into understandings and interpretations of the distinction between sex and sexual

violation. The latter consists of original data from interviews and focus groups conducted with lay people and relevant professionals including specialist police officers and domestic violence support workers. The book uses an innovative methodology, based on 'empirical ethics' approaches developed in the field of bioethics, to develop a new framework for distinguishing sex from sexual violation.

This new framework is then used to critique the current domestic legal framework, as encapsulated in the Sexual Offences Act 2003, focusing on the question of whether the consent standard satisfactorily distinguishes sex from sexual violation. It then offers some suggestions for legal reform, based on an alternative standard of 'freedom to negotiate' in place of consent.

Tanya Palmer is a Lecturer in Law at the University of Sussex.

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# Criminology and Policing



## Remorse, Penal Theory and Sentencing

Hannah Maslen

This monograph addresses a contested but under-discussed question in the field of criminal sentencing: should an offender's remorse affect the sentence he or she receives? Answering this question involves tackling a series of others: is it possible to justify mitigation for remorse within a retributive sentencing framework? Precisely how should remorse enter into the sentencing equation? How should the mitigating weight of remorse interact with other aggravating and mitigating factors? Are there some

offence or offender characteristics that preclude remorse-based mitigation?

Remorse is recognised as a legitimate mitigating factor in many sentencing regimes around the world, with powerful effects on sentence severity. Although there has been some discussion of whether this practice can be justified within the literature on sentencing and penal theory, this monograph provides the first comprehensive and in-depth study of possible theoretical justifications. Whilst the emphasis here is on theoretical justification, the monograph also offers analysis of how normative conclusions would play out in the broader context of sentencing decisions and the guidance intended to structure them. The conclusions reached have relevance for sentencing systems around the world.

Hannah Maslen is a Research Fellow in Ethics at the Uehiro Centre for Practical Ethics, University of Oxford.

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# Energy, Environmental and Natural Resources Law



## EU Environmental Law, Governance and Decision-Making

Second Edition

Maria Lee

A vast and diverse body of EU law addresses an enormous range of environmental matters. This book examines a number of areas of substantive EU environmental law, focusing on the striking preoccupation of EU environmental law with the structure of decision-making. It highlights the observation that environmental protection and environmental decision-making depend intimately both on detailed, specialised information about the physical state of the world, and on political judgments about values and priorities. It also explores the elaborate mechanisms that attempt to bring these diverse decision-making resources into EU environmental law in areas including industrial pollution, chemicals regulation, environmental assessment and climate change.

Maria Lee is Professor of Law at University College, London where she teaches and researches EU environmental law.

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## Environmental Principles and the Evolution of Environmental Law

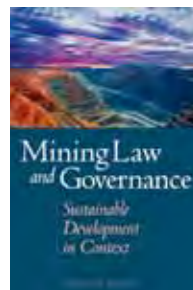
Eloise Scotford

Environmental principles proliferate in domestic international legal and policy discourse - from the polluter pays and precautionary principles to the principles of integration and sustainability - reflecting key goals of environmental protection and sustainable development on which there is apparent political consensus. Environmental principles also have a high profile in environmental law, beyond their popularity as policy and political concepts, as ideas that might unify the subject and provide it with conceptual foundations or boost its delivery of environmental outcomes. However, environmental principles are elusive concepts in environmental law - their meanings and legal functions are ambiguous, and they have varying histories in different jurisdictions. This book aims to deepen the legal understanding of environmental principles in light of recent legal developments. To this end, it analyses closely the increasing legal effects of environmental principles in different jurisdictions to demonstrate how they are in fact shaping and revealing innovative bodies of environmental law. This analysis is a step forward in understanding a key feature of modern environmental law, as well as being a contribution to environmental policy debates and discussions internationally that rely heavily on environmental principles, including their supposed legal effects.

Eloise Scotford is a Lecturer at the Dickson Poon School of Law at King's College London.

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## Mining Law and Governance Sustainable Development in Context

Elizabeth Bastida

Legal regimes for mining are experiencing enormous changes in the context of globalisation and against a backdrop of widespread expectation that mining should minimise its sustainability footprint and contribute to broad-based development. Traditionally the focus of legal regimes for mining was on defining property rights to facilitate extraction; today, by contrast, the key challenge is to establish a basis for sustainable governance. What this means is that legal regimes for mining are expected to embody key principles and cooperative rules of engagement for integrated management that are effective, transparent, accountable and inclusive, as well as being oriented towards sustainable development. This book seeks to explore these issues, and the challenges facing those charged with designing and enforcing agreements made in an ever-more complex mining environment.

Elizabeth Bastida is a Lecturer at the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee.

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## Regulation, Enforcement and Governance in Environmental Law

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*Regulation, Enforcement and Governance in Environmental Law* is an updated edition of Richard Macrory's most influential writings. Spanning his entire career, these are works which have helped shape contemporary environmental law and policy. The book includes the full text of his 2006 Cabinet Office Review on Regulatory Sanctions, new chapters on the Climate Change Act 2008, the Environment Tribunal, and analysis of recent leading cases.

Reviews of the first edition:

"This book is surely destined to become a 'must read' for anyone (academic, practitioner or student) interested in the development of regulation, enforcement, and environmental governance."

P Bishop, *IUCN Academy of Environmental Law Journal*

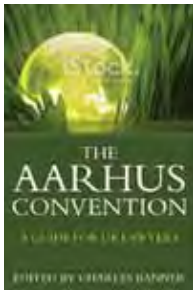
"It is a rare to find a volume which consumes one's attention for 765 pages - and rarer still that such a blockbuster be a law book.....This book is not solely for environmental enthusiasts - it should be essential reading for anyone concerned with the institutional reform, transparency and accountability in the UK and EU."

C MacKenzie, *Cambridge Law Journal*

Richard Macrory is a barrister, and Professor of Environmental Law at University College, London where he is director of the Centre for Law and the Environment and the UCL Carbon Capture Legal Programme.

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## The Aarhus Convention

A Guide for UK Lawyers

Edited by Charles Banner

The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters - known ubiquitously as the Aarhus Convention - is having an ever increasing influence on domestic and EU environmental law and procedure. Recent years have seen a steady flow of case-law from the UK Courts, CJEU and Aarhus Convention Compliance Committee, a raft of civil procedure reforms in response to concerns about whether the costs rules in domestic environmental litigation are compatible with the Convention, and an infraction by the European Commission against the UK alleging various systemic breaches. Even the EU itself has been the subject of a ruling by the Compliance Committee that the CJEU's rules on standing for judicial review of EU legislation are too narrow to comply with the Convention. This book, written by several of the leading experts in the field, provides a comprehensive guide to the implementation of the Convention in each of the UK's jurisdictions, the three pillars of the Convention (access to information, public participation and access to justice) and the mechanisms by which the rights by the Convention can be enforced.

Charles Banner is a barrister at Landmark Chambers and a College Lecturer in EU Law at Lincoln College, Oxford University.

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## The Strategic Environmental Assessment Directive

A Plan for Success?

Edited by Gregory Jones QC and  
Eloise Scotford

The Strategic Environmental Assessment Directive (Directive 2001/42/EC) (SEA) has been a lurking legal presence in EU and UK environmental law. Plainly of considerable significance in relation to strategic governmental plans and programmes, its practical implications are only now just beginning to be worked through. Legal challenges to decisions made even at the highest policy level are being brought on the back of the SEA Directive. This book is a comprehensive analysis of all aspects of the Directive, from its history and scope, to its impact on governmental policy and its implications in practice. The book is both timely, in light of key cases such as Case C-567/10 *Inter-Environnement Bruxelles* (CJEU, 22 March 2012) and *HS2*, and forward-looking, as it considers and projects future legal implications of the SEA Directive. Written by a blend of distinguished academics and leading practitioners it provides an in depth critique and rounded appreciation of both the immediate practical effects of SEA and its wider impact on European and UK environmental law.

Gregory Jones QC is a barrister at Francis Taylor Building and Visiting Lecturer at King's College London.

Eloise Scotford is a Lecturer in Environmental Law at King's College London.

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## A Guide to the National Planning Policy Framework

Law and Practice

General Editor: Gregory Jones QC

The National Planning Policy Framework (NPPF) is the key pillar in the government's aim of 'Delivering sustainable development and getting Britain building'. Launched on 27 March 2012 amid much controversy, the NPPF seeks to set out the entirety of the government's policy for town planning in a single document. The government claims it has three fundamental aims: 'To put unprecedented power in the hands of communities to shape the places in which they live; to better support growth to give the next generation the chance that our generation has had to have a decent home, and to allow the jobs to be created on which our prosperity depends; and to ensure that the places we cherish - our countryside, towns and cities - are bequeathed to the next generation in a better condition than they are now.' The NPPF became a material planning consideration for all town planning decisions in England immediately upon its publication. This book provides clear practical guidance and commentary on the NPPF by reference to ministerial and planning inspectorate decisions and court judgments. Written by an expert team of specialist planning barristers from the leading planning chambers of Francis Taylor Building and lead by Gregory Jones QC, it provides the essential single volume guide to sign post the reader through the new world of the NPPF.

Gregory Jones QC is a barrister at Francis Taylor Building and Visiting Lecturer at King's College London.

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## Documents in International Environmental Law

Edited by Maria Gavouneli and Ilias Plakokefalos



International Environmental Law is now a standard course for both undergraduate and postgraduate law students all over the world.

This collection follows the essential structure of environmental regulation, in an attempt to provide a clear picture of the mechanics of the system. It is comprised of a "General Part" (General Principles, Procedural Obligations and Civil liability and non-compliance procedures); selected "Sectoral regimes" (both the fundamental elements of the natural environment: habitat, sea, atmosphere, freshwater resources, polar regions, and the primary regimes of man-made intervention: nuclear power, chemicals, waste); and "Interface regimes" (Trade and Environment, Human Rights and Environment, Armed Conflict and Environment). It covers not only instruments of global application but also selected documents of regional origin but with a far more widespread impact. The interactive mélange of global and regional is a particular advantage of this volume.

This collection will appeal to students and lecturers alike, as it covers all aspects of a course on the topic. It is also a useful desk reference for research students and scholars as well as environmental and international law practitioners.

Maria Gavouneli is Assistant Professor of International Law at the University of Athens.

Ilias Plakokefalos is a Senior Research Fellow at the Amsterdam Center for International Law, University of Amsterdam.

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## EU Governance of GMOs

Patrycja Dąbrowska-Kłosińska

This book examines the European framework for commercial releases of genetically modified organisms (GMOs) adopted between 2001 and 2004 primarily in response to the crisis that surrounded the use of these products in the EU, and it assesses the regulatory character of this reform and its components. The author situates the problems of the EU GMO regime in the broader context of 'post-state' regulation and discusses them in the light of the governance theories that were developed to respond in part to the dilemmas of risk regulation. The book contains a systemic analysis of the EU rules pertinent to GM products, the new authorisation procedures for GMO marketing and the new system for post-approval control of commercialised products, as well as an evaluation of these solutions. This examination reveals that the regime embodies different regulatory modes introduced by the EU which are combined in various forms in a way that frequently influences the adequacy of the adopted measures. The findings suggest that the most appropriate solution for GMO policy in the EU is a reflexive combination of various regulatory approaches by policy-makers which allows for the reinforcement of their functions and the accommodation of different, often contradictory, policy needs.

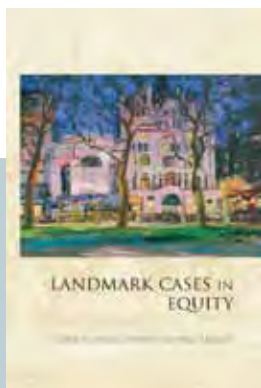
Patrycja Dąbrowska-Kłosińska is a Lecturer in EU Law at the Centre for Europe, University of Warsaw.

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# Equity and Trusts



## Landmark Cases in Equity

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*Landmark Cases in Equity* continues the series of Landmark Cases essays which began with *Landmark Cases in the Law of Restitution* (2006) and continued with *Contract* (2008) and *Tort* (2010). It contains essays on a series of landmark cases in the development of equitable doctrine running from the seventeenth century to recent times.

**Charles Mitchell** and **Paul Mitchell** are both Professors of Law at University College London.

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## **Charity, Law and Politics** Radicals, Conservatives or Subversives

Alison Dunn

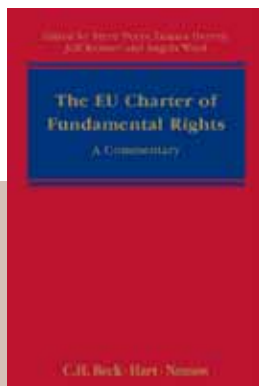
This monograph examines the content, development, application, rationale and reform of the legal prohibition that prevents charities from undertaking or pursuing political activities which are more than subsidiary to their charitable purpose. As service providers or ports of last call, charities and their regulatory framework at both theoretical and practical levels are faced with difficult questions regarding accountability, governance, independence and conflicts of interest. This is particularly so given the rise in the importance of the charitable and wider

voluntary sector over the last decade; the much lauded search for a 'third way'; and the blurring of the distinction between the public and private sectors. Central to all these issues lies the political nature of charities and the extent to which that political nature can be utilised. The law governing political activity of charities has not been subjected to systematic study in extant legal literature. There has been little jurisprudential analysis of the prohibition against political and campaigning activities of charities, the case law development, the rationales put forward for and against the prohibition. The monograph analyses the prohibition in English charity law and in so doing undertakes a comparative analysis of the treatment of political activities in other areas of law (such as the law of extradition, broadcasting law, electoral law and human rights law) and a comparative analysis of the same issues in the jurisdictions of Australia, Canada and the USA. This monograph concludes with a framework for reform which will be of interest to academics, practitioners and policy makers.

Alison Dunn is a Senior Lecturer in Law at the University of Newcastle.

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# European Law



## **The EU Charter of Fundamental Rights** A Commentary

Edited by Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward

The Charter of Fundamental Rights of the European Union enshrines the key political, social and economic rights of EU citizens and residents in EU law. In its present form it was approved in 2000 by the European Parliament, the Council of Ministers and the European Commission. However its legal status remained uncertain until the entry into force of the Treaty of Lisbon in December 2009. The Charter obliges the EU to act and legislate consistently with the Charter, and enables the EU's courts to strike down EU legislation which contravenes it. The Charter applies to EU Member States when they are implementing EU law but does not extend the competences of the EU beyond the competences given to it in the treaties.

This commentary on the Charter, the first in English, written by experts from a number of EU Member States, provides an authoritative but succinct statement of the how the Charter impacts upon EU, domestic and international law. Following the conventional article-by-article approach, each commentator offers an expert view of how each article is either already being interpreted in the courts, or is likely to be interpreted. Each commentary is referenced to the case law and is augmented with extensive references to further reading. Six cross-cutting introductory chapters explain the Charter's institutional anchorage, its relationship to the Fundamental Rights Agency, its interaction with other parts of international human rights law, the enforcement mechanisms, extraterritorial scope, and the all-important 'Explanations'.

**Steve Peers** is Professor of EU Law at the University of Essex.

**Tamara Hervey** is Professor of European Law at Sheffield University.

**Jeff Kenner** is Professor of EU Law at the University of Nottingham.

**Angela Ward** is a barrister and member of the English and Irish bars, currently working as a referendaire at the Court of Justice of the EU.

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## Process and Procedure in EU Administration

Carol Harlow and Richard Rawlings

This book is about the administrative procedures of the European Union, which we see as the 'super glue' holding in place the sprawling structures of the EU governance system. The early chapters deal with the structures expansively defined, the diverse functions of administrative procedures in the EU and the values that underpin them, concentrating on the respective contributions of the legislature and administration. A separate chapter deals with the important procedural function of rights-protection through the two Community Courts and the contribution of the European Ombudsman. We then turn to 'horizontal' or general procedures, dealing with executive law-making, transparency, and the regulation of government contracting. A study of Commission enforcement procedure ends the section. 'Vertical' or sector-specific studies in significant areas of composite and shared administration follow, including competition policy, cohesion policy and financial services regulation. A separate chapter deals with policing cooperation through Europol. The book ends with a general evaluation, including the author's reflections on current proposals for a European code of administrative procedure.

Carol Harlow is Emerita Professor of Law at the London School of Economics and Political Science.

Richard Rawlings is Professor of Public Law at University College London.

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## The European Court of Justice and External Relations Constitutional Challenges

Edited by Marise Cremona and Anne Thies

This edited collection appraises the role and impact of the European Court of Justice on the development of EU external relations law. To what extent does the Court contribute to a specific conception of the EU? How does the EU's constitutional order, as interpreted by the Court, shape its external relations? The Court still has only limited jurisdiction over the EU's common foreign and security policy: what are the implications of this decision? And what is the Court's own view of the relationship between court(s) and foreign policy, and of its own relationship with other international courts? The Court's influence over EU external relations derives from its ability to define the external competence of the EU and resulting constraints on the Member States, from its insistence on the autonomy of the EU legal order, and from its role as 'gatekeeper' to the entry of international law into the EU system. It has not - in the external domain - overtly exerted influence through shaping substantive policy. Nevertheless the 'legalised' nature of EU external relations and the significance of the EU's international legal commitments give the Court a central role. And of course its decisions can nonetheless be highly political.

Marise Cremona is Professor of European Law at the European University Institute in Florence.

Anne Thies is a Lecturer in Law at the University of Reading.

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## European Court Procedure A Practical Guide

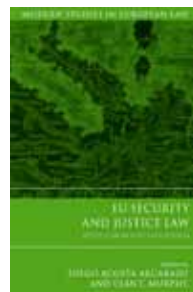
Viktor Luszcz and Carsten Zatschler

The enforcement of EU law usually begins in national courts or the European Commission, but often concludes with proceedings before the European Courts in Luxembourg: the Court of Justice and the General Court of the European Union. Litigation in these courts appears superficially to be like litigation before national courts but in fact harbours many pitfalls which can trip up even experienced practitioners. Based on the newly reformed rules of procedure, in force as of January 2012, and written by court insiders, this book gives a detailed, practice-oriented overview of the legal framework and working practices of the European Courts. It gives both lawyers appearing for the first time in Luxembourg and those with ample experience of litigating matters of EU law a comprehensive reference tool and guide to presenting their cases effectively. It covers the whole preliminary reference procedure - starting from obtaining a reference to the Court of Justice in a national court - and deals in detail with all aspects of direct actions against EU institutions brought in the General Court. Aimed primarily at practising lawyers, the work also offers valuable guidance to national judges dealing with cases raising points of EU law and provides insights into the reasoning process of the European Court of interest to scholars in the field.

Carsten Zatschler and Viktor Luszcz are members of the bars of, respectively, England & Wales and Hungary with between them 15 years' experience working as legal advisers (référéndaires) to judges of the Luxembourg courts.

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## EU Security and Justice Law After Lisbon and Stockholm

Edited by Diego Acosta Arcarazo and Cian C Murphy

The coming into force of the Lisbon Treaty has provided the EU with new powers in the fields of criminal law and security law while reinforcing existing powers in immigration and asylum law. The Stockholm Programme is the latest framework for EU action in the field of justice and home affairs. It includes a range of new legislation in the fields of immigration and asylum, substantive criminal law, criminal procedure and co-operation between national criminal justice systems. The combination of the new treaty and programme have made security and justice key areas of legislative growth in the EU. This volume brings together a range of leading scholars, as well as some of the most interesting new voices in the debate, to examine the state of EU security and justice law after the Lisbon Treaty and the Stockholm Programme. It provides a critical examination of EU law in the fields of immigration, asylum, counter-terrorism, citizenship, fundamental rights and external relations. The book also examines the evolving roles of the EU institutions and criminal justice agencies. It provides the first comprehensive account of EU law in this field under the developing constitutional and institutional settlement and asks what kind of EU law is emerging in this exciting field.

Diego Acosta Arcarazo is a Lecturer in Law at the University of Sheffield.

Cian C Murphy is a Lecturer in Law at King's College London.

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## The EU Law of International Relations

Second Edition

Panos Koutrakos



This new edition provides the definitive, comprehensive and systematic analysis of the law governing the EU's action in the world.

Updated to take into account the Lisbon Treaty, the book covers all constitutional aspects of the EU's international action, the procedures for treaty-making, the relationship between the EU and its Members, with emphasis on mixed agreements, the relationship between EU and public international law, the EU and international organisations such as WTO and ECHR, and the EU and economic relations generally. It also covers the EU's links with its neighbours and with developing countries, sanctions, the Common Foreign and Security Policy, and the Common Security and Defence Policy.

This new edition is the most up-to-date work of its kind, examining both the law and practice in a wide range of external policies, placing the law in its political and economic context and exploring the links between the EU's external and internal actions. The book will be of interest to academics, practitioners and students of EU law, politics and international relations.

Panos Koutrakos is Professor of European Union Law at City University London.

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## Commentary on the TEU/TFEU

Edited by Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur

This is the new English edition of a Commentary on the basic European Treaties which has already been very successfully published in five earlier editions in German. It comprises concise article-by-article commentaries on the most recent versions of the Treaty on European Union and the Treaty on the Functioning of the EU, supplemented by the Charter of Fundamental Rights (including the comments of the European Convention's Presidency) and the Treaty Protocols. The authors, all of them specialists on European law, provide a compact overview of the European primary law and also refer to the relevant secondary law. Each commentary contains an introduction to the particular legal area at issue and gives particular importance to the current case law of the European Court of Justice.

Rudolf Geiger is a former Judge at the Bavarian Court of Appeal in Munich and Professor Emeritus of European and Public International Law at the University of Leipzig.

Daniel-Erasmus Khan is Professor of European and Public International Law at the Bundeswehr University, Munich.

Markus Kotzur is Professor of Public International Law and European Law at the University of Hamburg.

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## Abuse of EU Law and Regulation of the Internal Market

Alexandre Saydé

How can the concept of abuse of EU law generate so much disagreement among experts? Transcending standard debates, this book argues that the concept of abuse of EU law straddles three major fault-lines of EU law, which accounts for the amount of controversy it creates.

The first fault-line pits legal congruence (the tendency to produce equitable outcomes) against legal certainty (the tendency to produce predictable outcomes). Partisans of congruence tend to endorse the concept of abuse of law, whereas partisans of certainty tend to reject it. The second fault-line is specific to EU law and divides two conceptions of the regulation of the internal market. If economic integration is conceived as the promotion of cross-border competition among private businesses (the paradigm of 'regulatory neutrality'), choices of law must be sanctioned as abusive, for they distort business competition. But if economic integration is intended to promote competition among Member States (the paradigm of 'regulatory competition'), choices of law by EU citizens represent a desirable process of arbitrage among national laws.

The third fault-line corresponds to the tension between the two poles of the European economic constitution: the fear of private power and the fear of public power. Those who fear private power tend to endorse the concept of abuse of law, whereas those who fear public power tend to reject it.

This book teases out these tensions and offers a fresh space in which fundamental questions about the nature and objectives of EU law can be confronted and examined in a new light.

Alexandre Saydé is a Référendaire in the Chamber of Judge Vajda at the Court of Justice of the European Union in Luxembourg.

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## The European Neighbourhood Policy and the Democratic Values of the EU

A Legal Analysis

Nariné Ghazaryan

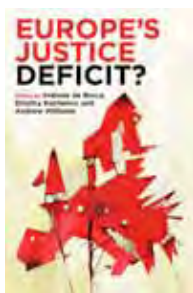
This book offers a legal analysis of the European Neighbourhood Policy (the ENP) as it applies to developing relations with the EU's neighbours in the East and South. It explores the legal aspects of this policy, including ENP competence matters, institutional arrangements and substantive policy issues, using international relations theory as the starting point in defining the EU's role as a political actor. The book focuses on the adequacy of the ENP legal framework for transposing the EU's democratic values and upholding its political image. In this connection, the book also features an analysis of EU democratic values as they are intended to be understood by its neighbours. The relevant legal framework of this policy and its implementation in the states of the South Caucasus (Georgia, Armenia and Azerbaijan) is evaluated, revealing the effects of the ENP in their democratic processes.

Nariné Ghazaryan is a Lecturer in Law at Brunel University.

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## Europe's Justice Deficit?

Edited by Gráinne de Búrca,  
Dimitry Kochenov and  
Andrew Williams

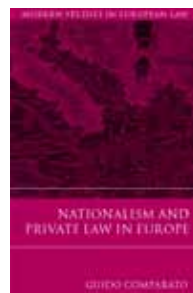
The gradual legal and political evolution of the European Union has not, thus far, been accompanied by the articulation or embrace of any substantive ideal of justice going beyond the founders' intent or the economic objectives of the market integration project. This absence arguably compromises the foundations of the EU legal and political system since the relationship between law and justice - a crucial question within any constitutional system - remains largely unaddressed. This edited volume brings together a number of concise contributions by leading academics and young scholars whose work addresses both legal and philosophical aspects of justice in the European context. The aim of the volume is to appraise the existence and nature of this deficit, its implications for Europe's future, and to begin a critical discussion about how it might be addressed. There have been many accounts of the EU as a story of constitutional evolution and a system of transnational governance, but few which pay sustained attention to the implications for justice.

The critical assessment of justice in the EU provided by the contributions to this book will help to create a fuller picture of the justice deficit in the EU, and at the same time open up an important new avenue of legal research of immediate importance.

Gráinne de Búrca, Dimitry Kochenov and Andrew Williams are respectively Florence Ellinwood Professor of Law at NYU Law School, Lecturer at Groningen Faculty of Law and Professor at Warwick School of Law.

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## Nationalism and Private Law in Europe

Guido Comparato

While the internationalisation of society has stimulated the emergence of common legal frameworks to coordinate transnational social relations, private law itself is firmly rooted in national law. European integration processes have altered this state of affairs to a limited degree with a few, albeit groundbreaking, interventions that have tended to engender resistance from various actors within European nation-states.

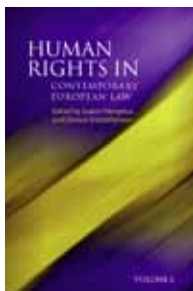
Against that background, this book takes as its point of departure the need to understand the process of legal denationalisation within broader political frameworks. In particular it seeks to make sense of opposition to Europeanisation at this point in the evolution of European law when, despite growing nationalist attitudes, great efforts have been made to produce comprehensive legal instruments to synthesise general contract law - an area that has traditionally been solely within the ambit of nation-states.

Combining insights from the disciplines of law, history and political science, the book investigates the conceptual and cultural associations between law and the nation-state, examines the impact of nationalist ideas in modern legal thought and reveals the nationalist underpinnings of some of the arguments employed against and, somewhat paradoxically, even in support of legal Europeanisation.

Guido Comparato is a Post Doctoral Researcher in the Law Department of the European University Institute.

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## Human Rights in Contemporary European Law

Edited by Joakim Nergelius  
and Eleonor Kristoffersson

This is volume 6 in the series *Swedish Studies in European Law*. Arising from the work of two well-attended seminars, this new volume concentrates on highly topical issues in European Law - current problems in the enforcement of human rights in Europe, and the Accession of EU to the European Convention on Human Rights. Among the topics dealt with are, apart from "the accession issue", questions related to the enforcement of the Charter of Fundamental Rights, human rights as general principles of law, specific issues like the "Double Jeopardy Clause" in relation to Swedish tax law, horizontal effect or so-called *Drittwirkung* of human rights and the increased role of judicial and constitutional review in Swedish courts. The book should be of value for any reader with an interest in such matters.

Joakim Nergelius is Professor of Law at the University of Örebro.  
Eleonor Kristoffersson is Professor of Law at the University of Örebro.

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## The European Court of Justice and the EU Constitutional Order

Essays in Judicial Protection

Takis Tridimas

This book assesses the influence of the Court of Justice on the governance of the EU and concentrates on the following themes: the function of the ECJ as the Supreme Court of the Union; judicial independence; the protection of the individual in the EU legal order; the relationship between the ECJ and the other branches of government at national and Union level, and the relationship between the ECJ and the CFI, the European Court of Human Rights, and national courts. It assesses the impact of the EU Reform Treaty on judicial protection and covers, among other topics, Union competence, direct effect, preliminary references, locus standi for individuals, a statistical analysis of judicial review, and judicial activism. It seeks to combine a close analysis of the case law with a wider law in context approach.

Takis Tridimas is the Sir John Lubbock Professor of Banking Law and the Deputy Director of the Centre for Commercial Law Studies, Queen Mary College, University of London.

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## European Police and Criminal Law Co-operation

Edited by Maria Bergström and Anna Jonsson Cornell

This is volume 5 in the series *Swedish Studies in European Law*. It focuses on EU criminal law and transnational police cooperation.

Against the background of the most important changes introduced by the Lisbon Treaty in the area of criminal law and police cooperation, this volume is divided into four main sections. Each section analyses some specific challenges. The first section includes a critical analysis of the boundaries of the new criminal law competencies, as well as some more general challenges for EU criminal law. Specific focus is set on the lawmaking process. The second section deals with EU criminal law and fundamental rights, in particular the protection of personal data and individual privacy. In this section, focus is on the implementation of EU law into national legal orders and the challenges that this process brings with it. The third section maps out specific challenges in transnational police cooperation, ie in particular, the important issue of sharing of information between law enforcement agencies and its potential impact on the protection of fundamental rights. In the fourth section, focus is shifted toward networks, horizontal agency and multi-level cooperation in a wider sense within the area of freedom, security and justice.

Maria Bergström is Associate Professor of European Law at the Faculty of Law, Uppsala University.

Anna Jonsson Cornell is Associate Professor of Constitutional Law and Senior Lecturer in Comparative Constitutional Law at Uppsala University.

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## The Constitutionalization of European Budgetary Constraints

Edited by Maurice Adams, Federico Fabbrini and Pierre Larouche

The recently enacted Treaty on the Stability, Coordination and Governance of the Economic and Monetary Union ('the Fiscal Compact') has introduced a "golden rule", a detailed obligation that government budgets in the EU be balanced. Moreover, it requires the 25 signatories to the Treaty to incorporate this "golden rule" within their national Constitutions. This requirement represents a major and unprecedented development, raising formidable challenges to the nature and legitimacy of national Constitutions as well as to the future of the European integration project. This book analyses the new constitutional architecture of the European Economic and Monetary Union (EMU), examines in a comparative fashion the constitutionalization of budgetary rules in the legal systems of the Member States, and discusses the implications of these constitutional changes for the future of democracy and integration in the EU. By combining insights from law and economics, comparative institutional analysis and legal theory, the book offers a comprehensive survey of the constitutional incorporation of new fiscal and budgetary rules across Europe and a systematic normative discussion of the legitimacy issues. It thus contributes to a better understanding of the Euro-crisis, of the future of the EU, and the reforms needed towards a deeper and genuine EMU.

Maurice Adams is Professor of Democratic Governance and the Rule of Law, and Head of the Department of Public Law at Tilburg Law School.

Federico Fabbrini is Assistant Professor of European and Comparative Constitutional Law at Tilburg Law School.

Pierre Larouche is Professor of Competition Law, and Director of Studies of the Bachelor Global Law at Tilburg Law School.

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## EU Law and Integration

Twenty Years of Judicial Application of EU Law

José Luís Da Cruz Vilaça

This book contains a collection of articles on different aspects of EU law written by one of Europe's most distinguished jurists during the past twenty years, some of which appear here for the first time in English. The book includes a Preface by Judge Koen Lenaerts, Vice-President of the European Court of Justice.

The book is divided into five parts, covering EU constitutional law, the EU's judicial architecture, access to justice, European competition law and various other aspects of substantive EU law. In the field of EU constitutional law, the central text discusses the existence of implied material limits to the revision of the Treaties. The author argues that the powers of the Member States to amend the Treaties is limited by the existence of a hard core of principles of EU Treaty law, which cannot be revised without changing the 'constitutional' identity of the Union, leading to the conclusion that Member States can no longer be considered as the 'absolute masters of the Treaties'. Four articles relating to the EU's judicial system constitute the cornerstone of the collection. Drawing on his own experiences, the author examines the problems and challenges facing the setting up of a new EU court and explores different lines of reform of the EU judicial system.

José Luís da Cruz Vilaça is Judge at the European Court of Justice.

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## Court of Justice of the EU

Commentary on Statute and Rules of Procedure

Edited by Bertrand Waegenbaur

This Commentary provides for a comprehensive overview of the procedural rules of the EU Courts in Luxembourg. The substantive aspects of the legal remedies at the Court of Justice, the General Court and the Civil Service Tribunal are laid down in the primary legislation, as amended by the Lisbon Treaty, while the procedural aspects are detailed in the Statute of the Court of Justice as well as the Rules of Procedure of the Court of Justice and the General Court. This Commentary discusses European procedural rules, article by article, taking due account of the established case-law of the Court, thus enabling the reader to navigate quickly and easily through the complex rules of procedure and to orientate him or herself quickly in cases brought before the EU Courts. The Commentary also covers the important "Instructions" and "Practical Guidelines" of the Court.

Bertrand Waegenbaur is a leading EU litigator having pleaded almost 300 cases before the European Court of Justice.

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## The European Crisis and the Transformation of Transnational Governance

Authoritarian Managerialism versus Democratic Governance

Edited by Christian Joerges and Carola Glinski

The debate on law, governance and constitutionalism beyond the state is confronted with new challenges. In the EU, confidence in democratic transnational governance has been shaken by the authoritarian and unsocial practices of crisis management. The ambition of this book, which builds upon many years of close co-operation between its contributors, is to promote a viable interdisciplinary alternative to these developments. "Conflicts-law constitutionalism" is a concept of transnational governance which derives democratic legitimacy from the supra-national control of the external impact of national decision-making, on the one hand, and the co-operative responses to problem interdependencies on the other. The first section of the book contrasts Europe's new modes of economic governance crisis management with the conditionality of international investments, and reflects upon the communalities and differences between emergency Europe and global exceptionalism. Subsequent sections substantiate the problem of executive and technocratic rule, explore conflict constellations of prime importance in the fields of environmental and labour law, and discuss the impact and limits of liberalisation strategies. Throughout the book, European and transnational developments are compared and evaluated.

Christian Joerges is Professor of Law and Society at the Hertie School of Governance, Berlin.

Carola Glinski is a Researcher at the Collaborative Research Center "Transformations of the State" at the University of Bremen.

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## EU Law in the Member States

*Viking, Laval and Beyond*

Edited by Mark Freedland and Jeremias Prassl

*EU Law in the Member States* is a new series dedicated to exploring the impact of landmark CJEU judgments and secondary legislation in legal systems across the European Union. Each book will be written by a team of generalist EU lawyers and experts in the relevant field, bringing together perspectives from a wide range of different member states in order to compare and analyse the effect of EU law on domestic legal systems and practice.

The first volume focuses on the uneasy relationship between the economic freedoms enshrined in Articles 49 and 56 TFEU and workers' right to take collective action. This conflict has been at the forefront of EU Labour law since the CJEU's much-discussed decisions in C-438/05 *Viking* and C-341/04 *Laval*, as well as the Commission's more recent attempts at legislative reforms in the failed Monti II Regulation. *Viking, Laval and Beyond* explores judicial and legislative responses to these measures in ten member states, and finds that the impact on domestic legal systems has been much more varied than traditional accounts of EU law would suggest.

Mark Freedland FBA QC (hon) is Emeritus Professor of Employment Law in the University of Oxford, and a Senior Research Fellow at St John's College, Oxford. Jeremias Prassl is a Supernumerary Teaching Fellow at St John's College, Oxford.

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## EU Risk Regulation

Towards a European Government of Health, Safety and Environmental Risks

Alberto Alemanno



Every day EU institutions and agencies make decisions about how to regulate the various risks that threaten the well-being of EU citizens. In this way the EU has produced an imposing and exponentially growing body of legislation intended to protect health, safety and the environment, although this was never really a planned development. Originally seen as a neo-functional spill-over from the internal market project, this body of legislation, collectively known as risk regulation, attests to the EU's gradual shift from mere market-creation to authentic polity-building.

By combining concepts, theories and ideas that belong to different disciplines interested in risk together with EU Law, this book offers an introduction to the emerging law and policy of EU risk regulation. After laying down theoretical foundations for the study of risk regulation, it provides a systematic analysis of the institutional and substantive dimensions of EU risk regulation and, more than sectoral studies can do, hence offers a realistic account of the evolution and characterisation of the EU's involvement in citizens' daily lives.

*EU Risk Regulation* fills a niche in European legal, policy and regulation studies and will be essential reading for scholars and professionals working in academia, legal practice and public administration.

Alberto Alemanno is Associate Professor of Law at HEC Paris where he holds a Jean Monnet Chair in EU Law and Risk Regulation.

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## EEA Law in Action

The EFTA Court, 20 Years On

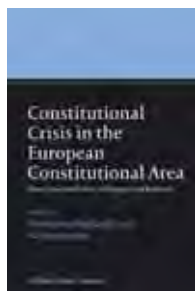
Edited by members of the EFTA Court

The EEA Agreement guarantees the free movement of persons, goods, services and capital, provides fair competition and abolishes discrimination on grounds of nationality in all 30 EEA States - the 27 EU States and 3 of the EFTA States. The successful operation of the EEA depends upon a two-pillar system of supervision involving the EC Commission and the EFTA Surveillance Authority. A two-pillar structure has also been established in respect of judicial control; the EFTA Court operates in parallel with the Court of Justice of the European Communities. The EFTA Court, which celebrates its 20th anniversary in 2014, has jurisdiction with regard to EFTA States which are parties to the EEA Agreement (at present Iceland, Liechtenstein and Norway). The jurisdiction of the EFTA Court mainly corresponds to the jurisdiction of the Court of Justice of the European Communities over EC States. It consists of three Judges, one nominated by each of the EFTA States party to the EEA Agreement.

The essays in this collection, assembled to celebrate the 20 year landmark, and written by members of the Court and external experts, review the successes and shortcomings of the Court, its interface with EU law, and the prospects for its future development.

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## Constitutional Crisis in the European Constitutional Area

Theory, Law and Politics in Hungary and Romania

Edited by Armin von Bogdandy and Pál Sonnevend

The concept of a European Constitutional Area has been used in legal scholarship to describe a common space of constitutionalism where national and international constitutional guarantees interact to maintain the common constitutional values of Europe. This concept has not yet been tested in a case where the constitutional order of a Member State of the EU seems to develop serious deficiencies. The present volume aims to assess recent constitutional developments in Hungary and Romania as well as the interplay of national, international and European constitutionalism that react to the loopholes in national constitutions. Accordingly, a core part of the volume is an in-depth analysis of the situation in Hungary and Romania. Based on that, the volume offers an account of the different reaction mechanisms of the European Union and of the Council of Europe. Beyond an actual stock-taking of these mechanisms, their legal and political frameworks are explored, as well as different ways to extend their reach. In this way the volume contributes to a little studied aspect of European Constitutionalism.

Armin von Bogdandy is Director at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg.

Pál Sonnevend is Vice Dean for International Relations of the Faculty of Law of ELTE, Budapest.

Hbk 9781849464642 326pp Jul 14 £50 €65 US\$100

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## Shaping the Single European Market in the Field of Foreign Direct Investment

Philip Strik

The Treaty of Lisbon (2009) has brought FDI within the scope of the EU's Common Commercial Policy (CCP). In light of this development, this book analyses the internal and external dimension of EU law and policy in the field of FDI. It takes four perspectives: (i) the operation of the internal market mechanism to direct investment; (ii) the implications of the Lisbon amendments to the CCP under Article 207 TFEU for the EU's competence and practice in the field of FDI; (iii) the interaction between EU law and Member States' bilateral investment treaties (BITs) with third countries; (iv) the interplay between EU law and BITs that are currently in force between two Member States (intra-EU BITs).

The book focuses on the extent to which the EU operates as a Single Market for EU and non-EU investors. In doing so, it analyses the EU and international regulatory framework on the admission, treatment and protection of FDI within, to and from the Single European Market. It uses close jurisprudential analysis and examines the context, purpose and evolution of EU legal integration in the field of FDI. It thereby traces the principles underlying the European international economic order in the field of FDI.

Philip Strik is a Legal Advisor in the EU law team in the Ministry of Foreign Affairs of the Netherlands and a member of its Diplomatic Service.

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## The Europeanisation of Remedies and Procedures through Judge-Made Law

Johanna Engström

This book provides a thorough overview and critical analysis of the European Court of Justice's case law on national remedies. It examines how and why such rules have been Europeanised through the application of the principle of effective judicial protection. The book contains detailed analysis of how the requirement of effective protection has been understood in relation to a range of national remedies and procedural rules.

The second half of the book looks at how the Swedish judiciary has responded to the European case law on effective judicial protection. Here what emerges is that national legal and judicial culture is of vital importance when it comes to national courts fulfilling their European mandate and rendering EU law effective. The author then asks whether, in light of this, the principle of effective judicial protection is a functional and effective tool to achieve the Europeanisation of remedies and procedures.

Johanna Engström is currently working at DG Justice at the European Commission.

Hbk 9781849462495 688pp Oct 14 £90 €117 US\$180

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## Towards a European Legal Culture

Geneviève Helleringer and Kai Purnhagen

The contributors to this book explore in different legal areas cultural pluralism might be a distinctive feature of European legal culture. Diversity is not something that is in opposition to, but rather constitutes a new, different understanding of European legal culture. The contributions demonstrate in detail how such an approach inter alia in the areas of private, corporate, administrative and constitutional law furthers understanding of a developing European legal culture, how it offers theoretical and doctrinal insights, and how it adds critical perspective.

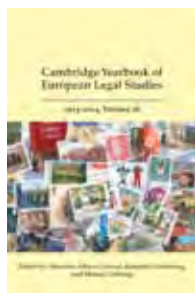
Geneviève Helleringer is a Fellow of St Catherine's College and a Research Fellow at the Institute of European and Comparative Law of Oxford University.

Kai Purnhagen is a Senior Research Fellow and Lecturer at the Ludwig-Maximilians-University in Munich and a Research Fellow at the Centre for the Study of European Contract Law at the University of Amsterdam.

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## Cambridge Yearbook of European Legal Studies, Vol 16 2013-2014

Edited by Albertina Albors-Llorens,  
Kenneth Armstrong, and  
Markus W Gehring

The *Cambridge Yearbook of European Legal Studies* provides a forum for the scrutiny of significant issues in EU Law, the law of the European Convention on Human Rights, and Comparative Law with a 'European' dimension, and particularly those issues which have come to the fore during the year preceding publication. The contributions appearing in the collection are commissioned by the Centre for European Legal Studies (CELS) Cambridge, a research centre in the Law Faculty of the University of Cambridge specialising in European legal issues.

The papers presented are at the cutting edge of the fields which they address, and reflect the views of recognised experts drawn from the University world, legal practice, and the institutions of both the EU and its Member States. Inclusion of the comparative dimension brings a fresh perspective to the study of European law, and highlights the effects of globalisation of the law more generally, and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders.

The *Cambridge Yearbook of European Legal Studies* is an invaluable resource for those wishing to keep pace with legal developments in the fast moving world of European integration.

Albertina Albors-Llorens is University Senior Lecturer, Fellow of Girton College and Member of the Centre for European Legal Studies at the Faculty of Law, University of Cambridge.

Kenneth Armstrong is Professor of European Law and Director of the Centre for European Legal Studies at the Faculty of Law, University of Cambridge.

Markus W Gehring is University Lecturer, Fellow of Hughes Hall and Deputy Director of the Centre for European Legal Studies at the Faculty of Law, University of Cambridge.

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## The EU Accession to the ECHR

Edited by Vasiliki Kosta, Nikos Skoutaris  
and Vassilis Tzevelekos

Article 6 TEU provides that the EU will accede to the system of human rights protection of the ECHR. Protocol No 9 in the Lisbon Treaty opens the way for accession. This represents a major change in the relationship between two organisations that have co-operated closely in the past, though the ECHR has hitherto exercised only an indirect constitutional control over the EU legal order through scrutiny of EU Member States. The accession of the EU to the ECHR is expected to put an end to the hegemonic struggle between the two regimes in Europe and to establish formal (both normative and institutional) hierarchies. In this new era some old problems will be solved and new ones will appear. Questions of autonomy and independence, of attribution and allocation of responsibility, of cooperation, and legal pluralism will all arise, with effects upon the protection of human rights in Europe.

This book seeks to understand how relations between the two organisations are likely to evolve after accession, and whether this new model will bring more coherence in European human rights protection. The book compares from several different, yet interconnected, points of view relevant practice, and explores the draft Accession Agreement, shedding light on future developments in the ECHR and beyond. Contributions in the book span classic public international law, EU law and the law of the ECHR, and are written by a mix of legal and non-legal experts from academia and practice.

Vasiliki Kosta is Assistant Professor of European Law at Leiden University.

Nikos Skoutaris is Lecturer of EU Law at the University of East Anglia and Visiting Senior Research Fellow at the European Institute, London School of Economics.

Vassilis Tzevelekos is a Lecturer in Public International Law at the University of Hull.

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# Evidence, Proof and Process



## Hearsay Evidence in Criminal Proceedings

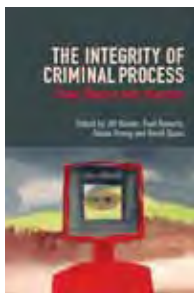
Second Edition

JR Spencer

The Criminal Justice Act 2003 re-wrote the hearsay evidence rule for the purpose of criminal proceedings, enacting the recommendations of the Law Commission together with some proposals from the Auld Review. In 2008, Professor Spencer wrote a book explaining the new law, intended for practitioners as well as academics. Following the style of his earlier book about the new law on bad character evidence, the core of the hearsay book was a section-by-section commentary on the relevant provisions of the Act, discussing the case-law that had interpreted them. Since the appearance of the first edition, the new law on hearsay evidence has been the subject of a spectacular exchange between the UK Supreme Court and the European Court of Human Rights, the effects of which the Court of Appeal has interpreted in a several leading cases. In this new edition, the commentary is revised to take account of these developments. As in the first edition, the commentary is preceded by chapters on the history of the hearsay rule, and the requirements of Article 6(3)(d) of the European Convention on Human Rights. It is followed by an appendix containing the text of the statutory provisions and a selection of the leading cases.

**JR Spencer QC** is Professor of Law in the University of Cambridge and a Fellow of Selwyn College, Cambridge.

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## The Integrity of Criminal Process

From Theory into Practice

Edited by Jill Hunter, Paul Roberts,  
Simon Young and David Dixon

Criminal proceedings, theorists and practitioners would generally agree, ought to be conducted with integrity. But what, exactly, does it mean for criminal process to have, or to lack, "integrity"? Is integrity in this sense merely an aspirational normative ideal, with possibly diffuse influence on conceptions of professional responsibility? Or is it also a juridical concept with robust institutional purchase and enforceable practical consequences in criminal litigation? The sixteen new essays contained in this collection, written by prominent legal scholars and criminologists from Australia, Hong Kong, the UK and the USA, engage systematically with - and seek to generate further debate about - the theoretical

and practical significance of "integrity" at all stages of the criminal process. Reflecting the flexibility and scope of a putative "integrity principle", the essays range widely over many of the most hotly contested issues in contemporary criminal justice theory, policy and practice, including: the ethics of police investigations and charging practice; prosecutorial independence, policy and operational decision-making; plea bargaining; the ethical obligations of expert witnesses; victims' rights; criminal procedure and rules of evidence; judicial reasoning; lay participation in criminal adjudication; innocence projects; and state compensation for wrongful convictions.

Jill Hunter is Professor of Law, University of New South Wales.

Paul Roberts is Professor of Criminal Jurisprudence, University of Nottingham and Adjunct Professor, University of New South Wales.

Simon Young is Professor of Law, University of Hong Kong.

David Dixon is Professor of Law and Dean of the Faculty of Law, University of New South Wales.

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## The Privilege Against Self-Incrimination and Criminal Justice

Andrew L-T Choo

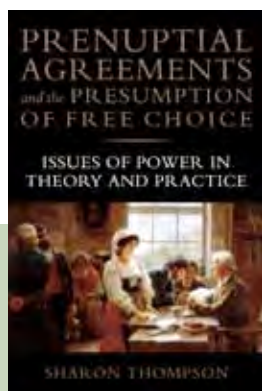
The privilege against self-incrimination is often represented in the case law of England and Wales as a principle of fundamental importance in the law of criminal procedure and evidence. Logically, recognition of a privilege against self-incrimination should mean that a person cannot be compelled to provide information that could reasonably lead to, or increase the likelihood of, her or his prosecution for a criminal offence. Yet there are many statutory provisions

in England and Wales allowing demands for information that, if provided, could be used in a criminal prosecution, and, if not provided, could result in a criminal prosecution for the failure to provide it. This book examines the operation of the privilege in England and Wales, paying particular attention to the influence of the European Convention on Human Rights and the Human Rights Act 1998 on the development of the principle. Among the questions addressed are whether the relevant case law clarifies sufficiently what the potential scope of the privilege is (does it apply, for example, to pre-existing material?), and how the privilege might be justified. Consideration is given where appropriate to the approaches taken in jurisdictions such as Canada, New Zealand and the US.

Andrew L-T Choo is a Professor of Law at City University London and a barrister at Matrix Chambers.

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# Family Law



## Prenuptial Agreements and the Presumption of Free Choice

Issues of Power in Theory and Practice

Sharon Thompson

This book provides an alternative perspective on an issue fraught with difficulty – the enforcement of prenuptial agreements. Such agreements are enforced because the law acknowledges the rights of spouses and civil partners to make autonomous decisions about the division of their property on divorce. Yet the book will demonstrate that, in the attempt to promote autonomy, other issues such as imbalance of power between the parties become obscured.

The book offers an academic and practical analysis of the real impact of prenuptial agreements on the relationships of those involved. Using a feminist and contractual theoretical framework, this book attempts to produce a more nuanced understanding of the autonomy exercised by parties entering into prenuptial agreements. The book also draws on an empirical study of the experiences and views of practitioners skilled in the formation and litigation of prenuptial agreements in New York. Finally, the book explores how the court might address concerns with power and autonomy during the drafting and enforcement processes of prenuptial agreements, which in turn may enhance the role that prenups can play in the judicial allocation of spousal property on the breakdown of marriage.

**Sharon Thompson** is a Lecturer in Law at the University of Keele.

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# Gender and the Law



## **The Australian Feminist Judgments Project** Righting and Re-writing Law

Edited by Heather Douglas, Francesca Bartlett, Trish Luker, Rosemary Hunter

This book brings together feminist academics, lawyers and activists to present an impressive collection of alternative judgments in a series of Australian legal cases. By re-imagining original legal decisions through a feminist lens, the collection explores the possibilities, limits and implications of a feminist approach to legal decision-making. Each case is accompanied by a brief commentary that places it in legal and historical context and explains what the feminist re-writing does differently to the

original case. The cases not only cover topics of long-standing interest to feminist scholars – such as family law, sexual offences and discrimination law – but also areas which have had less attention, including indigenous cultural heritage, immigration, taxation, intellectual property and environmental law. The collection contributes a distinctly Australian perspective to the growing international literature investigating the role of feminist legal theory in judicial decision-making.

**Heather Douglas** and **Francesca Bartlett** research and teach at the TC Beirne School of Law, The University of Queensland.

**Trish Luker** is a Chancellor's Postdoctoral Fellow at the Faculty of Law, University of Technology, Sydney.

**Rosemary Hunter** is a Professor at Kent Law School, University of Kent.

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# Human Rights



## Parliaments and Human Rights Redressing the Democratic Deficit

Edited by Murray Hunt, Hayley Hooper and Paul Yowell

This book is the first volume to unite theoretical and practical insights into the protection of human rights by legislatures from a number of domestic jurisdictions, international organisations, and leading scholars. In doing so it aims to present a complete picture of the parliamentary protection of human rights which will interest both academic scholars and practitioners. Specifically, the volume contains contributions analysing the processes of legislative protection of human rights from jurisdictions in Britain, Europe, and Australasia. It also contains studies on the role of the Council of Europe and the European Court of Human Rights, and a critical scholarly examination of the relationship between parliamentary and curial institutions within the context of the protection of human rights. Within the volume there are several central original contributions from key figures working at the heart of trans-national organisations dedicated to the legislative protection of human rights. The contributions from academic scholars investigate the consequences of legislative protection of human rights in the United Kingdom parliament drawing upon both empirical evidence and theoretical perspectives. The volume concludes with a scholarly analysis of the implications which flow from the project of democratisation of human rights in a wider context.

**Murray Hunt** is a Barrister and Legal Advisor to the Joint Committee on Human Rights at the United Kingdom Parliament.

**Hayley Hooper** is a Lecturer at Trinity College, University of Oxford.

**Paul Yowell** is a Fellow in Law at Oriel College, University of Oxford.

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Series: Hart Studies in Comparative Public Law



## Reasoning Rights Comparative Judicial Engagement

Edited by Liora Lazarus,  
Christopher McCrudden  
and Nigel Bowles

This book is about comparative reasoning in human rights cases. The aim is to explore the question: how is it that notionally universal norms are reasoned by courts in such dramatically different ways? What is the shape of this reasoning; which techniques are common across the transnational jurisprudence; and which are diverse?

The book, comprised of contributions by a team of world-leading human rights scholars, moves beyond simply addressing the institutional questions concerning courts and human rights, which too often dominate discussions of this kind,

seeking instead a deeper examination of the similarities and divergence in the content of reasons being developed by different courts when addressing comparable human rights questions. These differences, while partly influenced by institutional issues, cannot be attributable to them alone. This book explores the diverse and rich underlying spectrum of human rights reasoning, as a distinctive and particular form of legal reasoning, evident in the case studies across the selected jurisdictions.

Liora Lazarus is a Fellow in Law and University Lecturer in Law at St Anne's College, University of Oxford.

Christopher McCrudden is Professor of Equality and Human Rights Law, Queen's University Belfast; William W Cook Global Professor of Law at University of Michigan Law School; and a member of Blackstone Chambers.

Nigel Bowles is Director of the Rothermere American Institute at the University of Oxford.

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## Human Rights Law in Perspective

Humanity and Legality

Colin Harvey

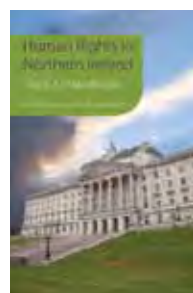
This book explores current discussions around the scope, implications and impact of human rights law in its global and local settings.

Rights discourse takes a multiplicity of forms, and the interactions at national, regional and international levels are complex and debates often sharply contested. In this context, this work examines what it means to view human rights law "in perspective" by examining debates on the protection of refugees, asylum seekers and displaced persons as a case study of the relationship between "humanity and legality".

Colin Harvey is Professor of Human Rights Law at Queen's University Belfast.

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## Human Rights in Northern Ireland

The CAJ Handbook

Second Edition

Edited by Brice Dickson and  
Brian Gormally



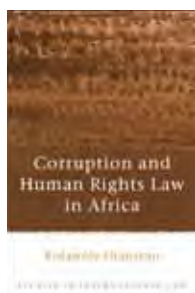
This Handbook is the latest version of a book that was last published in 2003, and has been completely revised to take account of the innumerable legal developments since then. The book contains 26 chapters on topics ranging across the full spectrum of civil, political, social, economic and environmental rights, with particular emphasis on the right not to be discriminated against. It is currently the most comprehensive and practical publication on the state of human rights in Northern Ireland. This is a part of the world where, as well as ongoing issues arising out of the conflict ('emergency laws' are still in place, for example), there are familiar questions concerning the rights of people with poor mental health, the law relating to family and sexual matters, children's rights, education rights, employment rights, housing rights, and social security rights. The contributors to the book are all experts in their field, most of them with years of experience as human rights activists and advisers. The book provides precise information about relevant legislation and case law (on which there are tables) and is fully indexed.

Brice Dickson is Professor of International and Comparative Human Rights Law at Queen's University Belfast.

Brian Gormally is Director of the Committee on the Administration of Justice in Belfast.

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## Corruption and Human Rights Law in Africa

Kolawole Olaniyan

This important new book provides a framework for complementarity between promoting and protecting human rights and combating corruption. The chapters make three major points regarding the relationship between corruption and human rights law. First, corruption per se is a human rights violation, insofar as it interferes with the right of the people to dispose of their natural wealth and resources and thereby increases poverty and frustrates socio-economic development. Second, corruption leads to a multitude of human rights violations. Third, the book demonstrates that human rights mechanisms have the capacity to provide more effective remedies to victims of corruption than can other criminal and civil legal mechanisms.

The book takes up one of the pervasive problems of governance – large-scale corruption – to examine its impact on human rights and the degree to which a human rights approach to confronting corruption can buttress the traditional criminal law response. It examines three major aspects of human rights in practice – the importance of governing structures in the implementation and enjoyment of human rights, the relationship between corruption, poverty and underdevelopment, and the threat that systemic poverty poses to the entire human rights edifice.

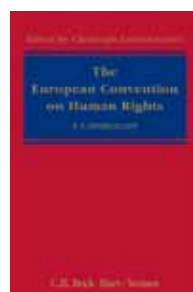
The book is a very significant contribution to the literature on good governance, human rights and the rule of law in Africa.

Kolawole Olaniyan is Legal Adviser in Amnesty International's International Secretariat, London.

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Series: Studies in International Law



## The European Convention for the Protection of Human Rights and Fundamental Freedoms

A Commentary

Edited by Christoph Grabenwarter

The European Convention on Human Rights (ECHR) entered into force on 3 September 1953 with binding effect on all Member States of the Council of Europe. It grants the people of Europe a number of fundamental rights and freedoms (right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, right to an effective remedy, prohibition of discrimination) plus some more by additional protocols to the Convention. Persons whose rights may have been infringed may bring a case to the European Court of Human Rights, and Member States are bound by the Court's decisions. Today the Court receives thousands of petitions annually, demonstrating the immense impact of the Convention and the Strasbourg Court.

Professor Grabenwarter's Commentary deals with the Convention systematically, article-by-article, considering the development and scope of each article, together with the relevant case-law and literature.

Christoph Grabenwarter is Professor of Law at the Vienna University of Economics and Business and a judge at the Austrian Constitutional Court.

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## Debating Hate Speech

Eric Heinze and Gavin Phillipson  
Foreword by Jeremy Waldron



Does hate speech undermine democracy, by attacking its most vulnerable members? Does it threaten the equal dignity of all citizens? Or are democracy and equality degraded not by hateful expression, but by censorship? Do hate speech bans give governments too much control over thought and ideas, or do bans secure the conditions for ideas to be meaningfully debated? Should each society choose its own rules? Or are some principles of free expression universal? Whom should hate speech bans protect: racial and ethnic groups, religious communities, women, sexual minorities, the disabled? Should we ban hateful words and images in public spaces but not on the internet? In this book Heinze and Phillipson draw on law, politics, philosophy and ethics to debate these questions. For Phillipson, narrowly drawn hate speech bans are essential to the social contract - a prerequisite for democratic deliberation, and a symbolic protection of every citizen's basic dignity. Heinze replies that punitive rules imposed to silence hateful views damage democracy, and governments have more legitimate and effective means of combating harmful speech. Drawing upon European, American and Commonwealth perspectives, this book will be of interest not only to lawyers, but also to readers in philosophy, politics and journalism.

Eric Heinze is Professor of Law at Queen Mary University of London.

Gavin Phillipson is Professor of Law at Durham University.

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Series: Debating Law



## Equality Bodies in Europe

Impact and Effectiveness

Edited by Caroline Gooding,  
Anna Lawson and Bob Niven

Despite being required by EU law, the role, structure and resourcing of equality bodies are surrounded by debate and controversy. These debates have been intensified by economic pressures which have caused governments throughout Europe to scrutinise public spending, including on equality bodies, with a view to making efficiency savings or cuts. At the same time, responses to economic recession threaten to increase inequality and thus to increase the need for vigilant and effective equality bodies.

This book provides a space for the detailed exploration of issues such as these. Given the current concern with achieving value for money, questions relating to the impact and effectiveness of equality bodies are given particular prominence. Much of the discussion has relevance to national human rights institutions as well as equality bodies and to countries outside Europe as well as within it.

This volume brings together experts at the cutting-edge of this topic - both from practice and from academia. Indeed, the majority of the authors have held key positions in equality bodies and have published extensively in the field. The book thus blends reflection enriched by practice and academic scholarship and, in so doing, offers an important and unique contribution to on-going political debate.

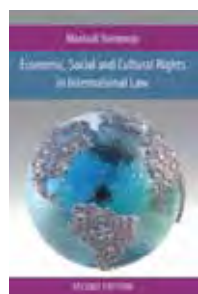
Caroline Gooding is an independent expert on disability rights and public sector duties.

Anna Lawson is Associate Professor of Law at the University of Leeds.

Bob Niven is Resident Adviser to the Israel Equal Employment Opportunities Commission.

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## Economic, Social and Cultural Rights in International Law

Second Edition

Manisuli Ssenyonjo



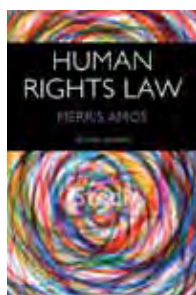
Since the first edition of this book was published in 2009, there have been numerous important developments including the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on individual communications and significant developments in the case law on economic, social and cultural (ESC) rights. This second edition explores ESC rights from foundational issues to substantive rights and systems of protection and has been fully updated to include new material and up-to-date coverage of the case law of human rights bodies and national courts on ESC rights. In addition to the rights to health, education and work covered in the first edition, the second edition analyses new developments including rights not covered in the first edition such as trade union rights, the right to an adequate standard of living (adequate food, water and housing), the right to social security and the right to take part in cultural life.

It also considers the relationship of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to other areas of international law, admissibility under the Optional Protocol, regional protection of ESC rights, and the protection of the ESC rights of vulnerable groups such as women, children, youths, persons with disabilities, older persons, prisoners, minorities, migrants, indigenous people, refugees and internally displaced persons.

Manisuli Ssenyonjo is Professor of International Law and Human Rights, and Director, Centre for International and Public Law at Brunel University, London.

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## Human Rights Law

### Second Edition

Merris Amos



In this completely revised and updated second edition of *Human Rights Law*, the judicial interpretation and application of the United Kingdom's Human Rights Act 1998 is comprehensively examined and analysed. Part I concerns key procedural issues including: the background to the Act; the relationship between UK courts and the European Court of Human Rights; the definition of victim and public authority; determining incompatibility including deference and proportionality; the impact of the Act on primary legislation; and damages and other remedies for the violation of Convention rights.

In Part II of the book, the Convention rights as interpreted and applied by United Kingdom courts, are discussed in detail. All important Convention rights are included with a new chapter on freedom of thought, conscience and religion. Other Convention rights considered in the national context include: the right to life; freedom from torture; the right to liberty; fair trial; the right to private life, family life and home; the right to peaceful enjoyment of possessions; and the right to freedom from discrimination in the enjoyment of Convention rights.

This edition will be invaluable for those teaching, studying and practicing in the areas of United Kingdom human rights law, constitutional law and administrative law.

Merris Amos is a member of the Department of Law at Queen Mary, University of London.

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## Rights in Pursuit of Social Change

Legal Mobilisation in the multi-Level European System

Edited by Dia Anagnostou

Over the past few decades, European countries have witnessed a proliferation of legal norms concerning marginalised individuals and minorities who increasingly invoke them in front of courts to assert their rights and claim protection.

The present volume explores the relationship between law, rights and social mobilisation in Europe. It specifically inquires into the extent and ways in which legal processes and entitlements are mobilised by less privileged social actors to advance their rights claims and pursue social change. Most distinctly, it explores such processes in the context of the multi-level European system, characterised by the existence of multiple legal and judicial arenas at the national, subnational and supranational/transnational level. In such a complex system of law and governance in Europe, concepts like legal opportunity structures, as well as the factors shaping them need to be reconceptualised. How does the multi-level European context distinctly shape the nature and salience of rights, as well as their mobilisation by individuals and minority actors?

Dia Anagnostou is Senior Research Fellow at the Hellenic Foundation for European and Foreign Policy (ELIAMEP) and Assistant Professor of Comparative Politics at Panteion University of Social Sciences in Athens.

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## Law in Transition

Human Rights, Development and Transitional Justice

Edited by Ruth Buchanan and Peer Zumbansen

Law has become the vehicle by which countries in the 'developing world', including post-conflict states or states undergoing constitutional transformation, must steer the course of social and economic, legal and political change. Legal mechanisms, in particular, the instruments as well as concepts of human rights, play an increasingly central role in the discourses and practices of both development and transitional justice. These developments can be seen as part of a tendency towards convergence within the wider set of discourses and practices in global governance. While this process of convergence of formerly distinct normative and conceptual fields of theory and practice has been both celebrated and critiqued at the level of theory, the present collection provides, through a series of studies drawn from a variety of contexts in which human rights advocacy and transitional justice initiatives are colliding with development projects, programmes and objectives, a more nuanced and critical account of contemporary developments. The book includes essays by many of the leading experts. The premise of the book is that it is only through engagement and dialogue among hitherto distinct fields of scholarship and practice that a better understanding of the institutional and normative issues arising in contemporary law and development and transitional justice contexts will be possible.

The book is designed for research and teaching at both undergraduate and graduate levels.

Ruth Buchanan is a Professor of Law at Osgoode Hall Law School, Toronto.

Peer Zumbansen is Professor of Law at Osgoode Hall Law School, Toronto and Senior Research Scholar at Michigan Law School.

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## The Human Right to Water

### Significance, Legal Status and Implications for Water Allocation

New as paperback

Inga T Winkler

"...the first legal monograph on the right to water released by an academic publisher and offers a solid and in-depth treatment of the subject matter...likely to become an essential standard reference for those interested in the right to water." Kerstin Mechlem, *Review of European Community and International Environmental Law*

"...stands apart as an excellent introduction that provides a thorough and well-balanced legal study of the human right to water in international law...The work's form is as polished as its content, with the arguments clearly spelled out and summarised through an orderly and elaborate structure that is well complemented by an impressive bibliography and a detailed table of instruments and index."

Hugo Tremblay, *McGill International Journal of Sustainable Development*

Inga Winkler is a Legal Adviser to the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation and a Lecturer at the University of Düsseldorf.

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## The Right to Housing

### Law, Concepts, Possibilities

New as paperback

Jessie Hohmann

The book provides a much-needed exploration of the right to housing, offering a new framework for argument within which the right can be reconsidered, reconnecting human rights with the social conditions of their violation, and hence with the reasons for their existence.

"Hohmann's work is a fitting introduction to the convoluted topic of housing as a human right. She adds insightful commentary to the concepts of housing and home" Matt Hartman, *LSE Review of Books*

"... an absolute bargain ... anyone who really wants to think about housing law (in the widest possible sense) should buy this book."

*Nearly Legal Blog: Housing Law News and Comments*

Jessie Hohmann is a British Academy Postdoctoral Research Fellow at the Lauterpacht Centre for International Law, University of Cambridge.

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## Making Sovereign Financing and Human Rights Work

Edited by Juan Pablo Bohoslavsky  
and Jernej Letnar Čerňič

Poor public resource management, the global financial crisis curbing fundamental fiscal space, millions thrown into poverty, and authoritarian regimes running successful criminal campaigns with the help of financial assistance are all phenomena that raise fundamental questions around finance and human rights. They also highlight the urgent need for more systematic and robust legal and economic thinking about sovereign finance and human rights.

This edited collection aims to contribute to filling this gap by introducing novel legal theories and analyses of the links between sovereign debt and human rights from a variety of perspectives. These chapters include studies of financial complicity, UN sanctions, ethics, transitional justice, criminal law, insolvency, millennium development goals, global financial architecture, trade, corporations, wealth funds, project financing, state responsibility, international financial institutions, the right to development, UN initiatives, litigation, as well as case studies from Africa, Asia and Latin America. These chapters are then theorised by the editors in a concluding chapter.

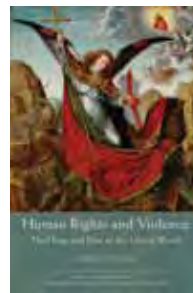
In July 2012 the UN Human Rights Council finally issued its own guidelines on foreign debt and human rights, yet much remains to be done to promote better understanding of the legal and economic implications of the interface between finance and human rights. This book will contribute to that understanding as well as help practitioners in their everyday work. The authors include world-renowned lawyers and economists, experienced practitioners and officials from international organisations.

Juan Pablo Bohoslavsky is a sovereign debt expert at UNCTAD.

Jernej Letnar Čerňič is Assistant Professor of Human Rights Law, School of Government and European Studies, Slovenia.

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## Human Rights and Violence

### The Hope and Fear of the Liberal World

Jarna Petman

The dilemma of a liberal human rights lawyer is this: one both believes in and doubts human rights. No wonder, for human rights are ambivalent. As positive legal enactments, they are the result of political bargaining that speak the concrete and verifiable language of rules; yet they also hold an intangible promise of universal good that is not reducible to a particular political community, time or place, but reaches beyond the text of enacted rules, evoking their cosmopolitan purpose. This dual nature makes human rights strong and accounts for their extraordinary appeal. But it also makes the practice of human rights a fundamentally liberal exercise in irresolution.

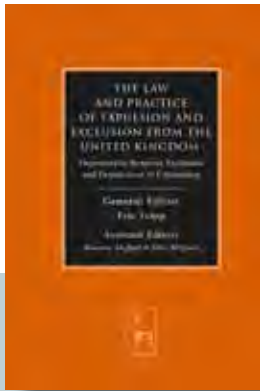
This new work seeks to offer a critical, albeit sympathetic, exploration of the conditions for practising and enforcing human rights in a world steeped in ambivalence. Through an historical narrative it first unravels the liberal tension that inheres in rights, and then moves on to examine the case law of the European Court of Human Rights to illustrate how the tension compels a choice in the exercise of rights. In the final part, the tension and the choice in rights is analysed within the realm of humanitarian violence. This is the realm of the tension - and the choice - between the hope and the fear of the liberal world.

Jarna Petman is Senior Lecturer in International Law and Deputy Director of the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki.

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Series: Hart Monographs in Transnational and International Law

# Immigration, Asylum, Refugee and Nationality Law



## The Law and Practice of Expulsion and Exclusion from the United Kingdom

### Deportation, Removal, Exclusion and Deprivation of Citizenship

General Editor: Eric Fripp, Assistant Editors: Rowena Moffatt and Ellis Wilford

Resort by the state to measures of exclusion and expulsion from the territory of the United Kingdom and/or from British citizenship have multiplied over the past decade, following the so-called 'war on terror', increased globalisation, and the growing politicization of national policies concerning immigration and citizenship.

This book, which focuses on the law and practice governing deportation, removal and exclusion from the United Kingdom, the refusal of naturalisation, and deprivation of British citizenship, represents the first attempt by practitioners to assess the law and practice in these areas as a cohesive area of state activity. The undertaking is a vital one because, whilst these areas of law and practice have long existed as the hard edge of immigration and nationality laws, in recent years they have expanded beyond secondary existence as mere mechanisms of enforcement. The body of law, practice and policy created by this process is one which justifies treatment as a primary concern for public lawyers.

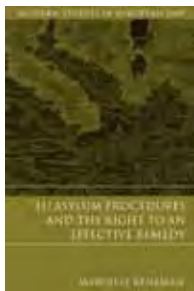
The book provides a comprehensive analysis of the law in these areas. This involves a consideration of interlocking international and regional rights instruments, European Union law and the domestic regime. It is a clear and comprehensive every-day guide for practitioners, and offers an invaluable insight into likely developments in this dynamic area of public law.

**Eric Fripp** is a barrister specialising in public, immigration and asylum law at Lamb Building, Temple.

**Rowena Moffatt** is a barrister specialising in public, immigration and asylum law at Lamb Building, Temple.

**Ellis Wilford** is a barrister specialising in public, immigration and asylum law at Lamb Building, Temple.

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## EU Asylum Procedures and the Right to an Effective Remedy

Marcelle Reneman

directive provides for important procedural guarantees for asylum applicants, but also leaves much discretion to the EU Member States to design their own asylum procedures.

This book examines the meaning of the EU right to an effective remedy in terms of the legality and interpretation of the Procedures Directive in regard to several key aspects of asylum procedure: the right to remain on the territory of the Member State, the right to be heard, the standard and burden of proof and evidentiary assessment, judicial review and the use of secret evidence.

Marcelle Reneman is Assistant Professor in the Migration Law Section at the VU University Amsterdam.

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Series: Modern Studies in European Law

Adequate and fair asylum procedures are a precondition for the effective exercise of rights granted to asylum applicants, in particular the prohibition of refoulement. In 1999 the EU Member States decided to work towards a Common European Asylum System. In this context the Procedures Directive was adopted in 2005. This



## The Reception of Asylum Seekers under International Law

Between Sovereignty and Equality

Lieneke Slingenberg

Increasingly, European states are using policy on the reception of asylum seekers to control immigration, deterring the lodging of asylum applications, preventing integration and exercising greater control over asylum seekers to facilitate expulsion. At the same time the EU is developing minimum conditions for the reception of asylum seekers as part of a Common European Asylum System. This book critically examines how the negotiation process for these minimum standards is working in relation to international refugee law, international social

security law and international human rights law, presenting a comprehensive analysis of state obligations in these different fields, especially with regard to asylum seekers' access to labour markets and social security benefits, and comparing them to the minimum standards developed in the EU. It thereby offers an in-depth study of non-discrimination on the basis of nationality in the field of social security and a detailed analysis of recent developments in the case law of the ECHR on positive obligations in the socio-economic sphere. Taking into account both the special characteristics of international legal obligations for states in this sphere and the legal consequences of the tentative legal status of asylum seekers, the book explores how this use of social policy conforms to international law.

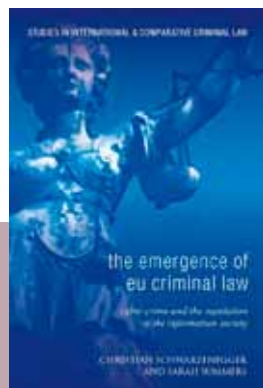
Lieneke Slingenberg is Assistant Professor of Migration Law at the VU University Amsterdam.

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Series: Studies in International Law

# International and Comparative Criminal Law



## The Emergence of EU Criminal Law Cyber Crime and the Regulation of the Information Society

Christian Schwarzenegger and Sarah Summers

Criminal law can no longer be neatly categorized as the product and responsibility of domestic law. That this is true is emphasized by the ever-increasing amount of legislation stemming from the European Union (EU) which impacts, both directly and indirectly, on the criminal law. The involvement of the EU institutions in the substantive criminal laws of its Member States is of considerable legal and political significance.

This book deals with the emerging EU framework for creating, harmonizing and ensuring the application of EU criminal law.

This book aims to highlight some of the consequences of EU involvement in the criminal law by examining the provisions which have been adopted in the field of information and communications technology. It provides, in part one, an overview of the criminal law competence of the EU and evaluates the impact of these developments on the criminal laws of the Member States. In the second part, EU legislation which requires Member States to regulate matters such as data protection, e-security, intellectual property and various types of illegal content through the criminal law is analysed. In the course of this evaluation, particular consideration is given to issues such as the basis on which the EU institutions establish the need for criminal sanctions, the liability of service providers and the extent to which the Member States have adhered to, or departed from, the legislation in the course of implementation.

**Christian Schwarzenegger** is Professor of Criminal Law, Criminal Procedure Law and Criminology and Head of the Institute of Criminology at the University of Zurich.

**Sarah Summers** is Oberassistentin at the University of Zurich and a Researcher at the Max-Planck-Institute for Foreign and International Criminal Law, Freiburg-im-Breisgau.

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Series: Studies in International and Comparative Criminal Law



## **Toward a Prosecutor for the European Union, Volume 2**

### **Draft Rules of Procedure**

Edited by Katalin Ligeti

In an era of increased EU influence in criminal law matters, attention has recently turned to the creation of a European Public Prosecutor's office. This two volume work presents the results of a study by a group of European criminal law experts, who were invited to examine current public prosecution systems in the Member States and to propose new rules for a European office.

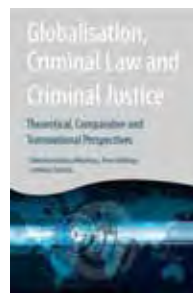
Volume 2 presents draft model rules for the European Public Prosecutors' Office together with comparative studies of the national prosecutorial systems, covering the gathering of evidence, seizure of assets, arrests, prosecution measures, procedural safeguards, the presumption of innocence and the right to silence, access to the file, and victim reconciliation. Volume 2 concludes with the final report by Professor Ligeti which summarises the findings of the group and explains the drafting of the model rules.

Katalin Ligeti is a Professor of European and International Criminal Law at the University of Luxembourg.

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Series: Modern Studies in European Law



## **Globalisation, Criminal Law and Criminal Justice**

### **Theoretical, Comparative and Transnational Perspectives**

Edited by Valsamis Mitsilegas,  
Peter Alldridge and Leonidas Cheliotis

This volume addresses from a cross-disciplinary perspective the multifarious relationship between globalisation on the one hand, and criminal law and justice on the other hand. At a time when economic, political and cultural systems across different jurisdictions are increasingly becoming parts of a coherent global whole, it appears that the study of crime and criminal justice policies and practices can no longer be restricted within the boundaries of individual nation-states or even particular transnational regions. But in which specific fields, to what extent, and in what ways does globalisation influence crime and criminal justice in disparate jurisdictions? Which are the factors that facilitate or prevent such influence at a domestic and/or regional level? And how does or should scholarly inquiry explore these themes? These are all key questions which are addressed by the contributors to the volume. In addition to contributions focusing on theoretical and comparative dimensions of globalisation in criminal law and justice, the volume includes sections focusing on the role of evidence in the development of criminal justice policy, the development of European criminal law and its relationship with national and transnational legal orders, and the influence of globalisation on the interplay between criminal and administrative law.

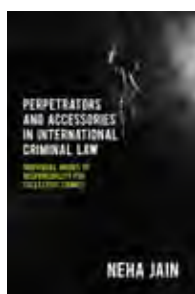
Valsamis Mitsilegas is Head of the Department of Law, Professor of European Criminal Law and Director of the Criminal Justice Centre at Queen Mary, University of London.

Peter Alldridge is Drapers' Professor of Law at Queen Mary, University of London.

Leonidas Cheliotis is Chancellor's Fellow in Law at the School of Law, University of Edinburgh.

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## **Perpetrators and Accessories in International Criminal Law**

### **Individual Modes of Responsibility for Collective Crimes**

Neha Jain

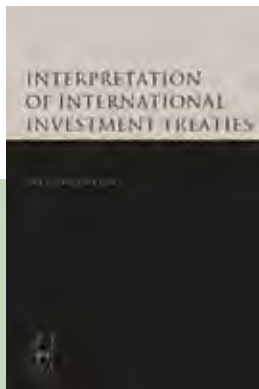
International criminal law lacks a coherent account of individual responsibility. This failure is due to the inability of international tribunals to capture the distinctive nature of individual responsibility for crimes that are collective by their very nature. Specifically, they have misunderstood the nature of the collective action or framework that makes these crimes possible, and for which liability can be attributed to intellectual authors and leaders. In this book, the author draws on insights from comparative law and methodology to propose doctrines of perpetration and secondary responsibility that reflect the role and function of high level participants in mass atrocity while simultaneously situating them within the political and social climate which renders these crimes possible. This new doctrine is developed through a novel approach which combines and restructures divergent theoretical perspectives on attribution of responsibility in the English and German domestic criminal law systems as major representatives of the common law and civil law systems. At the same time, it analyses existing theories of responsibility in international criminal law, and assesses whether there is any justification for their retention by international criminal tribunals.

Neha Jain is an Associate Professor at the University of Minnesota Law School.

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# International Investment Law



## Interpretation of International Investment Treaties

Tarcisio Gazzini

This book offers a systematic study of the interpretation of investment-related treaties - primarily bilateral investment treaties, the Energy Charter Treaty, Chapter XI NAFTA as well as relevant parts of Free Trade Agreements. The importance of interpretation in international law cannot be overstated and foreign investment law is no exception. Indeed, most treaty claims adjudicated before investment arbitral tribunals have raised and continue to raise crucial and often complex issues of interpretation. The

interpretation of investment treaties is governed by the relevant rules of the Vienna Convention on the Law of Treaties (VCLT), which reflect customary international law. The disputes related to these treaties, however, are very peculiar as they oppose a multinational company (or a natural person) to a sovereign government. The parties to the treaty and those to the dispute, therefore, do not coincide. This calls for a balanced interpretation that takes into account both the prerogatives of the sovereign State and the legally protected interests of the foreign investor.

Fundamental questions dealt with in the study include the following: are investment treaties a special category of treaties for the purpose of interpretation? How have the rules on interpretation contained in the VCLT been applied in investment disputes? What are the main problems encountered in investment-related disputes and are these problems peculiar to this type of dispute? To what extent are the VCLT rules suited to the interpretation of investment treaties? Have investment tribunals developed new techniques concerning treaty interpretation? Are these techniques consistent with the VCLT? How can the problems related to interpretation be solved or minimised? How creative have arbitral tribunals been in interpreting investment treaties? Are States capable of keeping effective control over interpretation?

The book takes a practical and problem-solving approach firmly based on arbitral awards and State practice and follows, to a large extent, the structure of the articles on treaty interpretation contained in the VCLT.

**Tarcisio Gazzini** is an Associate Professor in the Faculty of Law at the Vrije Universiteit, Amsterdam.

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## The Right to Regulate in International Investment Law

Catharine Titi

the right to regulate has gradually come to the spotlight as a key component of negotiations on new generation investment agreements around the globe. States and regional organisations, including, notably, the European Union and the United States, have started to examine ways in which to safeguard their regulatory power and guide - and delimit - the interpretive power of arbitral tribunals, by reserving their right to pursue specific public policy objectives. The monograph explores the status quo of the right to regulate, in order to offer an appraisal and a reference tool for treaty makers, thus contributing to a better understanding of the concept and the broader discourse on how to enhance the investment law system's legitimacy.

Catharine Titi works on issues in international investment law and international arbitration.

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Since the inception of the international investment law system, investment promotion and protection have been the *raison d'être* of investment treaties and states have confined their policy space in order to attract foreign investment and protect their investors abroad. Languishing in relative obscurity until recently,





## EU and Investment Agreements

### Open Questions and Remaining Challenges

Edited by Marc Bungenberg,  
August Reinisch and Christian Tietje

The transfer of Foreign Direct Investment competence to the EU within the Treaty of Lisbon opened the way for a more coherent EU international investment policy. Two and a half years on, an EU and Investment Agreements conference was convened to assess crucial issues that remain unresolved. This volume, which comprises the papers presented at that conference, focuses on topical and highly-debated issues such as the role of the Member States in the negotiation and conclusion of future EU investment agreements, the inclusion of investor-state dispute settlement provisions in these agreements, and the status of national investment insurance systems in the wake of the Treaty of Lisbon. These are the key topics which pose as yet unresolved questions and challenges that need to be successfully tackled in order for the EU to achieve its goal of a dynamic international investment policy.

Marc Bungenberg is the Chair of Public Law, European Law, Public International Law and International Economic Law at the University of Siegen.  
August Reinisch is Professor of International and European Law and head of the Section for International Law and International Relations at the University of Vienna.  
Christian Tietje is Professor of International and European Law and International Economic Law at the Martin-Luther-Universität Halle Wittenberg.

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## International Investment Law

### A Handbook

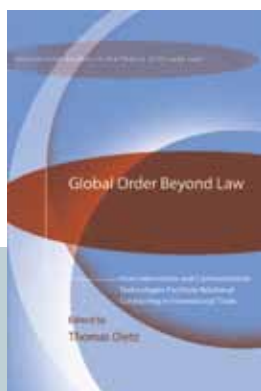
Edited by Marc Bungenberg,  
Jörn Griebel, Stephan Hobe and  
August Reinisch

The growing importance of international investment law, fuelled by the processes of globalisation and the search for natural resources, and fostered by the ease of cross-border financial flows, has given rise to a huge expansion in the incidence of new investment treaties and, consequently, disputes. The complexity of this area and the enormous sums of investment involved mean that the agreements and treaties themselves are highly evolved, while the disputes arising are often hugely intricate and intractable. No area of international law is more in need of the careful and balanced attention of scholars, of the sort which this Handbook brings to bear. Anyone interested in international investment law will appreciate the comprehensive, thoughtful and detailed exploration of this area which this distinguished group of German scholars have provided.

Marc Bungenberg is the Chair of Public Law, European Law, Public International Law and International Economic Law at the University of Siegen.  
Jörn Griebel is Assistant Professor at and Manager of the International Investment Law Centre Cologne.  
Stephan Hobe is a Director of the International Investment Law Centre Cologne and a Member of the ICSID Panel of Arbitrators.  
August Reinisch is Professor for International and European Law and head of the Section for International Law and International Relations at the University of Vienna.

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# International Trade Law



## Global Order Beyond Law

How Information and Communication Technologies Facilitate Relational Contracting in International Trade

Thomas Dietz

Well-functioning contract law is a crucial prerequisite for economic development. However, even though international trade has increased enormously in recent decades, we still know little about the contract enforcement mechanisms that exist in today's globalised markets. The aim of this work is to shed light on the governance of complex cross-border contracts by developing a comprehensive theoretical framework for understanding the relevance of both formal and informal institutions. This framework is then applied to an empirical study of cross-border software development contracts. Combining a unique data set of 41 qualitative expert interviews with statistical data and surveys, the author demonstrates that state contract laws show fundamental signs of dysfunction across borders. Companies engaged in globalised exchange therefore rarely use this mechanism. Even the European Union's supranational enforcement order is, in practice, insignificant. Against all expectations, international commercial arbitration also turns out to be limited in its ability to provide a workable legal infrastructure for global commerce. With global trade lacking a reliable formal legal order, companies have reacted by creating their own informal governance structures. This book explains how complex exchange on global markets has emerged in the absence of a global legal order.

**Thomas Dietz** is Associate Professor for Politics and Law at the University of Muenster.

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## Regional Economic Integration and Dispute Settlement in East Asia

The Evolving Legal Framework

Anna G Tevini

The accession of the People's Republic of China to the World Trade Organization (WTO) in 2001 significantly transformed global economic relations both de facto and de jure. At the regional level, China's WTO accession served as a catalyst for the juridification of economic relations in East Asia based on Regional Trade and Investment Agreements (RTAs). This was a novel development for the region, since East Asian states had previously followed a largely informal, market-based approach to regional economic integration, essentially limiting rules-based economic integration to the global level based on the "most favoured nation principle" under the GATT/WTO framework.

This book systematically analyses and explains the development, nature, and challenges of rules-based regional economic integration in East Asia with a focus on the first four East Asian RTAs, which involve the members of the Association of Southeast Asian Nations (ASEAN), China, Japan, Singapore and the Hong Kong SAR. While also addressing socio-economic, historical, and political factors, the book's primary focus are the legal institutions now shaping East Asian regional economic integration. At its core, the book provides a systematic, comparative account of the scope, depth and (hard law vs soft law) quality of rules-based economic integration achieved in AFTA, ACFTA, JSEPA and CEPA in the areas of the trade in goods and services, investment liberalization and protection and labor movement, as well as dispute settlement.

Anna G Tevini is a Senior Associate in the International Arbitration Group of Shearman & Sterling LLP in New York.

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## The Legitimacy of the World Trade Organisation

Joshua Meltzer

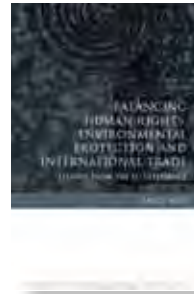
The range of global challenges faced today - from economic integration to climate change and food security - has highlighted the need for effective international governance. The WTO plays a key role in the governance of world trade, which has grown almost 200% since the WTO's beginning. Moreover, the role of trade in driving international economic integration means that formerly domestic regulation, on issues as varied as human health and labelling standards, directly affect international trade and are increasingly subject to WTO rules. The scope of the WTO's power and role in international economic governance highlights the need for this power to be legitimate. Only legitimate governance - where the exercise of power is accepted by those subject to its power - is sustainable and ultimately effective. A legitimacy deficit reduces the ability of the WTO to drive liberalization or develop rules to address new challenges, and ultimately leads to non-compliance by countries with their WTO commitments. Drawing on different democratic theories to analyse the legitimacy of the WTO, its rules and jurisprudence, this book examines the question of legitimacy and proposes how current limits to the WTO's legitimacy can be addressed.

Joshua Meltzer is a Fellow in the Global Economy and Development Program at the Brookings Institution.

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Series: Studies in International Trade Law



## Balancing Human Rights, Environmental Protection and International Trade

Lessons from the EU Experience

Emily Reid

This book explores the means by which economic liberalisation can be reconciled with human rights and environmental protection in the regulation of international trade. It is primarily concerned with identifying the lessons the international community can learn, specifically in the context of the WTO, from decades of European Community and Union experience in facing this question.

The book demonstrates first that it is possible to reconcile the pursuit of economic and non-economic interests, that the EU has found a mechanism by which to do so, and that the application of the principle of proportionality is fundamental to the realisation of this. It is argued that the EU approach can be characterised as a practical application of the principle of sustainable development. Secondly, from the analysis of the EU experience, this book identifies fundamental conditions crucial to achieving this 'reconciliation'. Thirdly, the book explores the implications of lessons from the EU experience for the international Community. In so doing it assesses both the potential and limits of the existing international regulatory framework for such reconciliation.

Emily Reid is a Lecturer in European Law at the University of Southampton.

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Series: Studies in International Trade Law

# Labour and Discrimination Law



## **Equality** The Legal Framework

Second Edition

Bob Hepple

The second edition of this widely-acclaimed book about the Equality Act 2010 by one of its leading architects brings forward the story of how and why this historic legislation was enacted and what it means, to cover the first four years of its implementation by the Coalition Government and in the courts. This includes an assessment of amendments to the legislation and of the reduction in the powers and budget of the Equality and Human Rights Commission, as well as a discussion of possible future directions of equality law and policy.

From the Foreword to the first edition by Lord Lester of Herne Hill QC

**"This is no ordinary law book, and its author is no ordinary lawyer. The book, like the Equality Act 2010 which it describes and discusses, is a major landmark in the long struggle for effective legal protection of equal rights and equal treatment without direct or indirect discrimination, it places the law in its political, economic and social context and traces its often contested and controversial legal history ..."**

**"... the first in-depth academic analysis of this complex and wide-ranging legislation...sure to be one of the leading points of reference for future scholars. The book is very well written in a style that happily blends accessible and captivating commentary with perceptive insight and reflection ... a valuable introduction to the field. At the same time, there is a richness and depth that will make this book stimulating for the specialists in equality law, whether academic or practitioner."**

Mark Bell, *Social and Legal Studies*

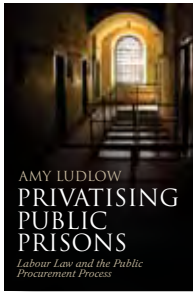
**"... admirably fulfils the aim of informing the general reader as well as students of law and social sciences, human rights activists and lawyers. It will also be essential reading for all those who want to understand the past, present and future of discrimination law."**

Maleiha Malika, *Industrial Law Journal*

**Sir Bob Hepple QC, FBA** is Emeritus Master of Clare College and Emeritus Professor of Law at the University of Cambridge.

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## Privatising Public Prisons

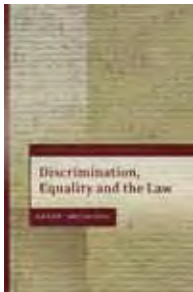
Labour Law and the Public Procurement Process

Amy Ludlow

Successive UK Governments have sought to reform public services by introducing private sector competition, promising cheaper, higher quality services, while at the same time protecting public sector workers. Public procurement rules provide the legal framework within which the Government must deliver on its promises. This book goes behind the operation of these rules to explore their interaction with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); regulations that were intended to protect workers when their employer restructures its business. The practical effect of these regulations is critiqued from a social protection perspective, using empirical findings from a case study of the competitive tendering exercise for management of HMP Birmingham held by the National Offender Management Service between 2009 and 2011. The book challenges the Government's portrayal of competition policies as self-evidently a source of improvement for public services. It highlights the damage that can be caused by competitive processes to social capital and the organisational, cultural and employment strengths of a public service. Its main conclusions are that prison privatisation processes are driven by procedure rather than aims and outcomes and that the complexity of the public procurement rules, coupled with inadequate commissioning expertise and organisational planning, result in the production of contracts that lack aspiration and are insufficiently focused upon improvement or social sustainability. In sum, the book casts doubt upon the desirability and suitability of using competition as a policy mechanism to improve public services.

Amy Ludlow is a Lecturer in Law at Gonville and Caius College, Cambridge University, where she is also an affiliated Lecturer in the Institute of Criminology.

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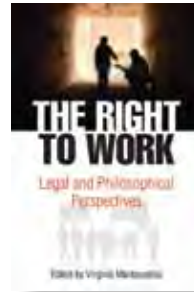
## Discrimination, Equality and the Law

Aileen McColgan

This monograph explores some of the conceptual issues which underpin the legal disputes which arise in relation to equality and discrimination. Among these issues are the meaning of 'equality' as a legal concept and its relationship to the principle of non-discrimination; symmetrical and asymmetrical approaches to equality/non-discrimination; the role of comparators in discrimination/equality analysis; the selection of protected characteristics and the proper sphere of statutory and constitutional protections, and the scope for and regulation of potential conflicts between protected grounds. The author engages with domestic, EU and ECHR case law as well as with wider international approaches. Moreover she also addresses a number of contemporary issues for equality law, including the problem of racial profiling and the regulation of multiple discrimination.

Aileen McColgan is Professor of Human Rights Law at King's College London and a barrister at Matrix Chambers.

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## The Right to Work

Legal and Philosophical Perspectives

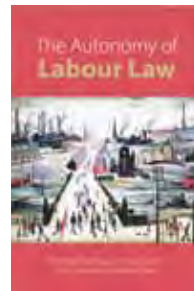
Edited by Virginia Mantouvalou

In today's world the value of work cannot be underestimated. Work brings both material and non-material benefits, such as the goods needed for survival, goods needed for self-development, and other material goods that contribute to a fulfilling life. Work can also inspire a sense of achievement, self-esteem and the esteem of the others, and often leads to the development of important social relations.

While this all suggests that work is a fundamental good, can it therefore be said that there is a human right to this good? If so, what is the content of this right? Does it impose a duty on governments to promote full employment, or entail an obligation to protect individuals from unfair dismissal? Who are the right holders? For example, do migrants have a right to work? What of undocumented migrants, asylum-seekers or refugees? This book addresses the uncertainty and controversy surrounding the right to work in theoretical scholarship and in policy-making, spanning the philosophical underpinnings of the right, and its development in human rights law at national level (such as in the UK, Australia, France and the US), and at international level (for instance in the European Social Charter, ILO and ECHR).

Virginia Mantouvalou is a Reader in Human Rights and Labour Law, and Co-Director of the Institute for Human Rights at University College London.

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## The Autonomy of Labour Law

Edited by Alan Bogg, Cathryn Costello, A C L Davies and Jeremias Prassl

To what extent is labour law an autonomous field of study? This book is based upon the papers written by a group of leading international scholars on this theme, delivered at a conference to mark Professor Mark Freedland's retirement from his teaching fellowship in Oxford. The chapters explore the boundaries and connections between labour law and other legal disciplines such as company law, competition law, contract law and public law; labour law and legal methodologies such as reflexive governance and comparative law; and labour law and other disciplines such as ethics, economics and political philosophy. In so doing, it represents a cross-section of the most sophisticated current work at the cutting edge of labour law theory.

Alan Bogg is Professor of Labour Law at the University of Oxford, and Fellow and Tutor in Law at Hertford College.

Cathryn Costello is Andrew W Mellon University Lecturer in International Human Rights and Refugee Law, Refugee Studies Centre, Oxford Department of International Development.

A C L Davies is Professor of Law and Public Policy, University of Oxford and Garrick Fellow and Tutor in Law at Brasenose College.

Jeremias Prassl is Fellow and Tutor in Law at St John's College, Oxford.

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## The Economic and Financial Crisis and Collective Labour Law in Europe

Edited by Niklas Bruun, Klaus Lörcher and Isabelle Schömann

The current economic and financial crisis erupted several years ago. Its effects impact deeply upon society, in which legal rules and social patterns have developed to enable the establishment of civilisation, justice and peace. Over time it has become more and more obvious that policy, financial and economic actors have adopted austerity measures as a main tool to solve the ensuing problems, and that these measures have hit social policy standards sometimes dramatically.

Recent analyses have dealt with several aspects of this issue. This book focuses on one important element: the impact on collective labour law. It seeks to add to the debate by presenting mainly legal arguments derived from different sources and backgrounds, examining the EU and 'Troika' measures, the economic and political background, and the sometimes dramatic consequences of austerity measures on democracy, collective bargaining and the right to strike. Against the framework of EU law, the relevant ILO Conventions, and (Revised) European Social Charter and European Convention on Human Rights provisions, the non-compliance of these measures is analysed and demonstrated. The book is also dedicated to procedural questions, and in particular how legal approaches may be used to challenge austerity measures

Niklas Bruun is Professor of Law at the Hanken School of Economics in Helsinki. Klaus Lörcher is former Legal Adviser to the European Trade Union Confederation (ETUC) and former Legal Secretary of the Civil Service Tribunal of the European Union.

Isabelle Schömann is Senior Researcher at the European Trade Union Institute (ETUI).

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## Towards the Single Employment Contract: Comparative Reflections

Giuseppe Casale and Adalberto Perulli

This book examines the concept of the single employment contract, tracing it from its genesis and evaluating its pros and cons in the context of the current labour market problems in selected European countries.

The book adopts a comparative approach to examining the single employment contract, highlighting its virtues and revealing its inherent contradictions. The authors set out the general framework within which the current debate has developed by outlining the origins that gave rise to the proposal of a single employment contract. They then review the debate on labour market segmentation and the flexicurity proposal and examine the key characteristics of the single employment contract as well as the arguments put forward both for and against it. Case studies show how the idea has been taken up in France, Italy and Spain. The book concludes with a concise review of contractual arrangements in EU labour markets and of possible future projections and developments.

The book is likely to be of interest to academics and practitioners interested in labour market and labour legislation reforms.

Giuseppe Casale is the Director of the Labour Administration and Inspection Programme at the International Labour Office in Geneva.

Adalberto Perulli is Professor of Labour Law at Cà Foscari University of Venice.

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| Pbk | 9781849465816 | 106pp | Dec 13 | £22 | €28.60 | US\$44 |
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# Law and Humanities



## Sex, Crime and Literature in Victorian England

Ian Ward

The Victorians worried about many things, prominent among their worries being the 'condition' of England and the 'question' of its women. *Sex, Crime and Literature in Victorian England* revisits these particular anxieties, concentrating more closely upon four 'crimes' which generated especial concern amongst contemporaries: adultery, bigamy, infanticide and prostitution. Each engaged questions of sexuality and its regulation, legal, moral and cultural, for which reason each attracted the considerable interest not just of lawyers and parliamentarians, but also novelists and poets and perhaps most importantly those who, in ever-larger numbers, liked to pass their

leisure hours reading about sex and crime. Alongside statutes such as the 1857 Matrimonial Causes Act and the 1864 Contagious Diseases Act, *Sex, Crime and Literature in Victorian England* contemplates those texts which shaped Victorian attitudes towards England's 'condition' and the 'question' of its women - the novels of Dickens, Thackeray and Eliot, the works of sensationalists such as Ellen Wood and Mary Braddon, and the poetry of Gabriel and Christina Rossetti. *Sex, Crime and Literature in Victorian England* is a richly contextual commentary on a critical period in the evolution of modern legal and cultural attitudes to the relation of crime, sexuality and the family.

**Ian Ward** is Professor of Law at Newcastle University.

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# Legal Biography and Humour



## **F.A. Mann** A Memoir

Geoffrey Lewis

Francis (FA) Mann was among the most brilliant of the German-Jewish émigrés who came to Britain in the 1930s to escape persecution in Hitler's Germany. Born and educated in Germany, he was in time to become one of Britain's most distinguished international lawyers; a scholar of English, German and international law, a practitioner admired for his skill and tenacity, and the author of countless books and articles on international and domestic law whose views were very much shaped by his personal experiences and who in turn helped to shape international law in the 20th century.

Mann enjoyed a traditional German education and was set for a career in the law when Hitler came to power in 1933. Both Mann and his wife, Lore immediately moved to England, where Mann in due course established a legal practice which in time merged with that of Herbert Smith. It was here that he became both an original and enterprising legal practitioner, and influential legal writer, with a global reputation as a jurist, steeped in the civil and common law - a true 'cosmopolitan' lawyer.

This book is a personal recollection by someone who knew him as a friend and professional colleague for more than 30 years.

**Geoffrey Lewis** was a pupil, partner and friend of Francis Mann in the law firm of Herbert Smith for more than thirty years. He retired in 1990 to write and this is his fifth book.

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# Legal Education and the Legal Profession

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## Common Law Legal English and Grammar A Contextual Approach

Second Edition

Alison Riley and Patricia Sours

Illustrious English Judge Lord Denning once said 'Words are the lawyer's tools of trade'. This book reflects that conviction, focusing on the language of the law – legal terms, expressions, and grammar – introduced systematically with relevant aspects of the law, and examined in context through analytical reading activities based on original legal texts selected for their interest and importance in different branches of the common law. The book explores constitutional law, criminal law, tort, and contract, but also includes international law, human rights and European law.

The presentation of legal concepts and terminology in context is graded, building on vocabulary and law encountered in earlier chapters. Each chapter includes a series of tasks to complete, yet the book does not presuppose previous knowledge of legal English or of the common law: full answers and reflective commentary on both legal and linguistic aspects are given and sections marked 'Advanced' offer especially challenging materials.

*Common Law Legal English and Grammar* is addressed to the non-native speaker of English, and in particular, intermediate to advanced law students, or academics with a professional interest in Anglo-American law. Practising lawyers will also find that the book offers valuable analysis of the language of legal documents.

**Alison Riley** is Lecturer in Legal English at the University of Ferrara.

**Patricia Sours** is Lecturer in Legal English at the University of Padua.

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## Judicial Decision-Making in a Globalised World

A Comparative Analysis of the Changing Practices of Western Highest Courts

Elaine Mak

Why do judges study legal sources which originated outside their own national legal system, and how do they use arguments from these sources in deciding domestic cases? Based on interviews with judges, this book presents the inside story of how judges engage with international and comparative law in the highest courts of the United Kingdom, Canada, the United States, France, and the Netherlands. A comparative analysis of the views and experiences of the judges clarifies how the decision-making of these western courts has developed in light of the internationalisation of law and the increased opportunities for transnational judicial communication. While the qualitative analysis reveals the motives which judges claim for using foreign law and the influence of 'globalist' and 'localist' approaches to judging, the author also finds suggestions of a convergence of practices between the courts which are the subject of this study. This empirical analysis is complemented by a constitutional-theoretical inquiry into the

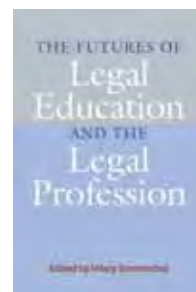
procedural and substantive factors of legal evolution, which enable or constrain the development and possible convergence of highest courts' practices. The two strands of the analysis are connected in a final contextual reflection on the future development of the role of western highest courts.

Elaine Mak is an Associate Professor of Jurisprudence at the Erasmus University Rotterdam.

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Series: Hart Studies in Comparative Public Law



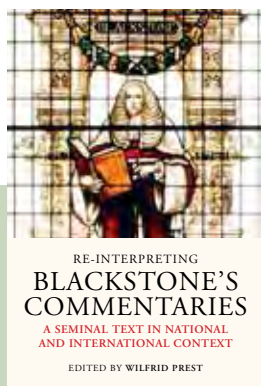
## The Futures of Legal Education and the Legal Profession

Edited by Hilary Sommerlad

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# Legal History



## Re-Interpreting Blackstone's Commentaries A Seminal Text in National and International Contexts

Edited by Wilfrid Prest

This collection explores the remarkable impact and continuing influence of William Blackstone's *Commentaries on the Laws of England*, from the work's original publication in the 1760s down to the present. Contributions by legal and literary scholars, cultural and intellectual historians, trace the manner in which this truly seminal text has established its authority well beyond the author's native shores or his own limited lifespan.

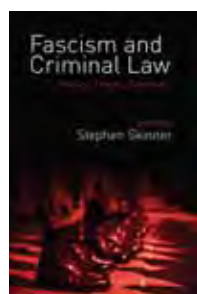
Following an editorial introduction, in the first section, 'Reading Blackstone', Kathryn Temple, Cristina Martinez and Michael Meehan discuss the Commentaries' aesthetic and literary qualities as factors contributing to the work's unique status in Anglo-American legal culture.

The second section considers the nature and dimensions of Blackstone's impact in various non-English jurisdictions: Quebec (Michel Morin), Louisiana (John W Cairns), North Carolina (John V Orth) and Australasia (Wilfrid Prest). Horst Dippel and Paul Halliday then examine aspects of Blackstone's constitutional and political ideas. Finally Jessie Allen provides a personal account of 'Reading Blackstone in the Twenty-First Century and the Twenty-First Century through Blackstone'.

**Wilfrid Prest** is Professor Emeritus in Law and History at the University of Adelaide.

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## Fascism and Criminal Law History, Theory, Continuity

Edited by Stephen Skinner

Fascism has been described as 'the major political innovation of the twentieth century, and the source of much of its pain'. Brutal, repressive and in some cases totalitarian, the fascist and authoritarian regimes of the early twentieth century, in Europe and beyond, sought to create revolutionary new orders that crushed their opponents. A central component of such regimes' exertion of control was criminal law, a focal point and key instrument of State punitive and repressive power. This collection brings together a range of original essays by international

experts in the field to explore questions of criminal law under Italian Fascism and other similar regimes, including Franco's Spain and inter-war Romania and Japan. Addressing issues of substantive criminal law, the form and function of criminal justice institutions, and the role and perception of criminal law in processes of transition, the collection casts new light on fascism's criminal legal history, and related questions of theoretical interpretation and historiography. At the heart of the collection is the problematic issue of continuity and similarity among fascist systems and preceding, contemporaneous and subsequent legal orders, an issue that goes to the heart of fascist regimes' historical identity and the complex relationship between them and the legal orders constructed in their aftermath. The collection thus makes an innovative contribution both to the comparative understanding of fascism, and to critical engagement with the foundations and modalities of criminal law across systems.

Stephen Skinner is a Senior Lecturer in Law at the University of Exeter.

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## Magna Carta Uncovered

Anthony Arlidge QC and  
Lord Igor Judge

2015 marks the 800th anniversary of the grant at Runnymede of liberties to the freemen in Magna Carta. The story of how Magna Carta came into being and has been interpreted since, has more twists and turns than the best soap opera.

The authors bring their unrivalled interpretative skills to uncover the original meaning of the liberties enshrined in Magna Carta, and to trace their development in later centuries up to the drafting of the Constitution of the United States. The Charter was ground breaking in the way subjects tried to limit the power and conduct of government. At the same time it was a conservative document, following the form of Anglo Saxon Charters and trying to return government to the ways of early Norman and Angevin kings.

This book tells the history of Magna Carta in a concise and readable fashion and will be of interest to lawyer and layman alike.

Anthony Arlidge has been a Queen's Counsel for over 30 years. In 1990 he was called upon during a case to argue the meaning of clause 40 of Magna Carta.

Lord Igor Judge was Lord Chief Justice of England and Wales until September 2013 having been a High Court Judge for 25 years.

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## Blackstone and his Commentaries

Biography, Law, History  
New as Paperback

Edited by Wilfrid Prest

One of the most celebrated works in the Anglo-American legal tradition, William Blackstone's *Commentaries on the Laws of England* (1765-9) has recently begun to attract renewed interest from legal and other scholars. They continue to be regularly cited in the judgments of superior courts throughout the common-law world and also provide constitutional, cultural, intellectual and legal historians with a remarkably comprehensive account of the role of law, lawyers and the courts in England on the cusp of the industrial revolution. The life and character of Blackstone himself and the impact of his great book are the main themes of this collection, which combines the work of both eminent and emerging scholars. This interdisciplinary venture sheds welcome new light on a legal classic and its continued influence.

"This is a very interesting and useful collection of essays, which show very clearly how, nearly 250 years after the publication of his greatest work, there still remains much to be said about the Commentator".

Michael Lobban and Gary Phillips, *The Journal of Legal History*

Wilfrid Prest is Professor Emeritus in History and Law at the University of Adelaide.

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# Legal Philosophy

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## Modern Jurisprudence A Philosophical Guide

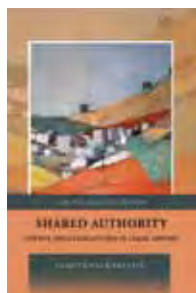
Sean Coyle

This book provides a concise and accessible guide to modern jurisprudence, offering an examination of the major theories and systematic discussion of themes such as legality and justice. It gives readers a better understanding of the rival viewpoints by exploring the historical developments which give modern thinking its distinctive shape, and placing law in its political context. A key feature of the book is that readers are not simply presented with opposing theories, but are guided through the rival standpoints on the basis of a coherent line of reflection from which an overall sense of the subject can be gained. Chapters on Hart, Fuller, Rawls, Dworkin and Finnis take the reader systematically through the terrain of modern legal philosophy, tracing the issues back to fundamental questions of philosophy, and indicating lines of criticism that build to a fresh and original perspective on the subject.

Sean Coyle is Professor of English Laws at the University of Birmingham.

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## Shared Authority

### Courts and Legislatures in Legal Theory

Dimitrios Kyritsis

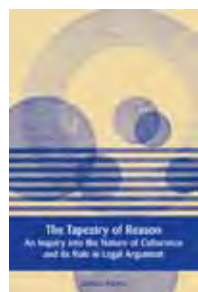
This important new book advances a fresh philosophical account of the relationship between the legislature and courts, opposing the common conception of law, in which it is legislatures that primarily create the law, and courts that primarily apply it. This conception has eclectic affinities with legal positivism, and although it may have been a helpful intellectual tool in the past, it now increasingly generates more problems than it solves. For this reason, the author argues, legal philosophers are better off abandoning it. At the same time they are asked to dismantle the philosophical and doctrinal infrastructure that has been based on it and which has been hitherto largely unquestioned. In its place the book offers an alternative framework for understanding the role of courts and the legislature; a framework which is distinctly anti-positivist and which builds on Ronald Dworkin's interpretive theory of law. But, contrary to Dworkin, it insists that legal duty is sensitive to the position one occupies in the project of governing; legal interpretation is not the solitary task of one super-judge, but a collaborative task structured by principles of institutional morality such as separation of powers. Moreover in this collaborative task, different participants have a moral duty to respect each other's contributions.

Dimitrios Kyritsis is a Lecturer in Law at Sheffield University.

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Series: Law and Practical Reason



## The Tapestry of Reason

### An Inquiry into the Nature of Coherence and its Role in Legal Argument

Amalia Amaya

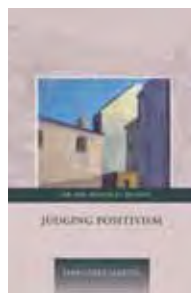
Recently legal scholarship has been heavily influenced by coherence theories of law and adjudication. These theories significantly advance the case for coherentism in law, yet a number of problems remain. This ambitious new work is the first to develop a coherence-based theory of legal reasoning, and in so doing addresses, or at least mitigates, these problems. The book is organised in three parts. Part one critically analyses the main coherentist approaches to both normative and factual reasoning in law. Part two investigates coherence theory in a number of fields that are relevant to law: coherence theories of epistemic justification, coherentist approaches to belief revision and theory-choice, coherence theories of practical and moral reasoning and coherence-based approaches to discourse interpretation. Taking this interdisciplinary analysis as a starting point, part three develops a coherence-based model of legal reasoning, building upon the standard theory of legal reasoning, leading to a reconsideration of some of the basic assumptions that characterise this theory and suggesting some lines along which it may be further developed. Thus, the book not only improves upon the current state of coherence theory in law, but also helps to articulate a theory of legal reasoning that results in better decision-making.

Amalia Amaya is a Researcher in the Institute of Philosophical Research at the National Autonomous University of Mexico.

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## Judging Positivism

Margaret Martin

*Judging Positivism* is a critical exploration of the method and substance of legal positivism. Margaret Martin is primarily concerned with the manner in which theorists who adopt the dominant positivist paradigm ask a limited set of questions and offer an equally limited set of answers, artificially circumscribing the field of legal philosophy in the process. The book focuses primarily but not exclusively on the writings of Joseph Raz. Martin argues that Raz's theory has changed over time and that these changes have led to deep inconsistencies and incoherencies in his account. One re-occurring theme in the book is that Razian positivism collapses from within. In the process of defending his own position, Raz is led to support the views of many of his main rivals, namely, Ronald Dworkin, the legal realists and the normative positivists. The internal collapse of Razian positivism proves to be instructive. Promising paths of inquiry come into view and questions that have been suppressed or marginalised re-emerge, inviting fresh reflection. The broader vision of jurisprudential inquiry defended in this book re-connects philosophy with the work of practitioners and the worries of law's subjects, bringing into focus the relevance of legal philosophy for lawyers and laymen alike.

Margaret Martin is an Assistant Professor in the Faculty of Law at the University of Western Ontario.

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## Law and Authority under the Guise of the Good

Veronica Rodriguez-Blanco

The received view of legal authority accepts that a sound account of legitimate authority must explain how a legal authority has a right to command and the addressee a duty to obey. The received view fails to explain, however, how legal authority truly operates upon human beings as rational creatures. Taking a bottom-up approach, this book begins at the microscopic level of agency and practical reason, leading up to the justificatory framework of authority. The book advances the idea that legal authority and normativity are intertwined; if we are able to understand how the agent exercises practical reason under legal directives and how the agent engages practical reason by following legal rules grounded on reasons for actions as good-making characteristics, then we can grasp the nature of legal authority and legal normativity. Using the philosophies of action enshrined in the works of Elisabeth Anscombe and Thomas Aquinas, the book explains practical reason as diachronic future-directed intention in action and argues that this conception illuminates the structure of practical reason of the legal rules' addressees. The account is comprehensive, enabling us to distinguish authoritative and normative legal rules in just and good legal systems from 'apparent' authoritative and normative legal rules in evil legal systems. At the heart of the book is the methodological view of a 'practical turn' to elucidate the nature of legal normativity and authority.

Veronica Rodriguez-Blanco is a Senior Lecturer in Law at the University of Birmingham.

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Series: Law and Practical Reason



## Freedom and Force

### Essays on Kant's Legal Philosophy

Edited by Sari Kisilevsky and  
Martin J Stone

The last decade has seen a strong renewal of interest in Kant's legal philosophy. The principle Kantian text - the first part of *The Metaphysics of Morals* - has long been considered obscure and fragmentary. However, recently a number of powerful readings of this text have emerged, prominent among them Arthur Ripstein's *Force and Freedom: Kant's Legal and Political Philosophy*. Ripstein's work reveals the systematic unity of Kant's thinking about law, and at the same time sheds light on many contemporary issues. The current volume brings together essays by leading scholars, who take Ripstein's work as their starting point, but

go on to offer readings and elucidations which go beyond it to dispute, extend and elaborate his key themes and their significance for contemporary legal and political philosophy.

These essays are offered as contributions to normative philosophy in a broadly Kantian spirit. Prominent themes include rights in the body, the relation between morality and law, the nature of coercion and its role in legal obligation, the role of indeterminacy in law, the nature and justification of political society and the theory of the state. The resulting volume will be of interest to legal scholars, Kantian scholars, and philosophers with an interest in Kant or in legal and political philosophy.

Sari Kisilevsky is an Assistant Professor of Philosophy at Queens College in the City University of New York.

Martin J Stone is Professor of Law in the Benjamin N Cardozo School of Law at Yeshiva University, and Adjunct Professor of Philosophy at the New School University.

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# Litigation and Civil Procedure



## Law and Corporate Behaviour

### Integrating Theories of Regulation and Enforcement

Christopher Hodges

The purpose of this book is to examine the theories and practice of how to control corporate behaviour through legal techniques. The principal theories examined are deterrence, (especially economic analysis), the findings of empirical research on responsive regulatory systems, and the findings of behavioural psychology research. Leading examples of the various approaches are given in order to illustrate the models: private enforcement of law through litigation in the USA, public enforcement of

competition law by the European Commission, and the recent reform of policies on public enforcement of regulatory law in the United Kingdom.

Noting that behavioural psychology has as yet had only limited application in legal and regulatory theory, the book then analyses various European regulatory structures where behavioural techniques can be seen or could be applied. The book concludes by proposing an holistic model for maximising compliance within large organisations, combining public regulatory and criminal controls with internal corporate systems and external influences by stakeholders, held together by a unified core of ethical principles.

**Christopher Hodges** is Head of the CMS Research Programme on Civil Justice Systems at the Centre for Socio-Legal Studies, University of Oxford and Erasmus Professor of the Fundamentals of Private Law, Erasmus University.

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Series: Civil Justice Systems



**Regulating Dispute Resolution**  
ADR and Access to Justice at the Crossroads

Edited by Felix Steffek and Hannes Unberath in cooperation with Hazel Genn, Reinhard Greger and Carrie Menkel-Meadow

This book proposes a principled approach to the regulation of dispute resolution. It covers dispute resolution mechanisms in all their varieties, including negotiation, mediation, conciliation, expert opinion, mini-trial, ombud procedures, arbitration and court adjudication. The authors present a transnational Guide for Regulating Dispute Resolution (GRDR). The regulatory principles contained in this Guide are based on a functional taxonomy of dispute resolution mechanisms, an open normative framework and a modular structure of regulatory topics. The Guide for Regulating Dispute Resolution is formulated and commented upon in a concise manner to assist legislators, policy-makers, professional associations, practitioners and academics in thinking about which solutions best suit local and regional circumstances.

The aim of this book is to contribute to the understanding and development of the legal framework governing national and international dispute resolution. Theory, empirical research and regulatory models have been taken from the wealth of experience in 12 jurisdictions: Austria, Belgium, Denmark, England and Wales, France, Germany, Italy, Japan, the Netherlands, Norway, Switzerland and the United States of America. Experts with a background in academia, practice and law-making describe and analyse the regulatory framework and social reality of dispute resolution in these countries. On this basis the authors draw conclusions about policy choices, regulatory strategies and the practice of conflict resolution.

Felix Steffek is Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law, Hamburg.

Hannes Unberath was Professor of Law at the University of Bayreuth.

Hazel Genn DBE, QC (Hon) is Dean of Laws, University College London.

Reinhard Greger is Professor of Law at the University of Erlangen-Nürnberg.

Carrie Menkel-Meadow is Professor of Dispute Resolution and Civil Procedure at Georgetown University Law School.

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**Collective Actions**  
A Comparative Study

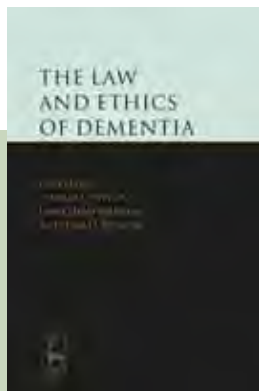
Rebecca Money-Kyrle

This is a wide-ranging study of collective redress. The procedural rules applicable to collective redress ought to filter out cases which do not fulfil certain criteria determined in accordance with the assumed or explicit aims of the mechanisms. Those rules may be regarded as ‘safeguards’ against abusive litigation or barriers to access to justice. Typical examples include rules restricting rights qualifying for collective redress, admissibility controls, restrictions on legal standing and representation and controls on funding and costs. Whether such rules act as justifiable ‘safeguards’ or ‘barriers’ depends on the conceptual model and policy aims adopted in each jurisdiction. Thus, this work has two aims. Firstly, it examines different conceptual models of collective redress. Secondly it undertakes a detailed comparative review of examples of those models to ascertain which types of safeguards or barriers are incorporated in order to maximise the effectiveness and policy aims. Jurisdictions studied stretch from Latin America, the US and Europe, to Asia and Africa. Besides examining generic collective redress mechanisms, the study takes into account ‘regulatory’ enforcement models such as sector-specific collective procedures in consumer protection, financial services and securities law, environmental protection, employment law and fundamental rights.

Rebecca Money-Kyrle is a post-doctoral researcher at the Centre for Socio-legal Studies, University of Oxford.

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| Series: Civil Justice Systems  |               |       |        |     |     |         |

# Medical Law and Ethics



## The Law and Ethics of Dementia

Edited by Charles Foster, Jonathan Herring and Israel Doron

Dementia is a topic of enormous human, medical, economic, legal and ethical importance. Its importance grows as more of us live longer. The legal and ethical problems it raises are complex, intertwined, and under-discussed. This book brings together contributions from clinicians, lawyers and ethicists - all of them world leaders in the field of dementia - and is a comprehensive, scholarly yet accessible library of all the main (and many of the fringe) perspectives. It begins with the medical facts: what is dementia? Who gets it? What are the current and future therapeutic and palliative options? What are the main challenges for medical and nursing care? The story is then taken up by the ethicists, who grapple with questions such as: is it legitimate to lie to dementia patients if that is a kind thing to do? Who is the person whose memory, preferences and personality have all been transformed by their disease? Should any constraints be placed on the sexual activity of patients? Are GPS tracking devices an unpardonable interference with the patient's freedom? These issues, and many more, are then examined through legal lenses. The book closes with accounts from dementia sufferers and their carers. It is the first and only book of its kind, and the authoritative text.

**Charles Foster** is a Fellow of Green Templeton College, University of Oxford and a practising barrister.

**Jonathan Herring** is Professor of Law at the University of Oxford.

**Israel Doron** is Head of the Department of Gerontology, University of Haifa.

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| Hbk            | 9781849464178 | 432pp | Jun 14 | £60 | €78 | US\$120 |
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## Landmark Cases in Medical Law

Edited by Jonathan Herring and Jesse Wall

This new addition to Hart Publishing's *Landmark Cases* series brings together leading figures in the field to discuss a selection of the most significant cases in medical law. These are cases which either signpost a new development for medical law, illustrate an important development of the law, or signpost likely future developments of the law. The cases are explored in their social and historical context to understand better what has influenced the development of the law. This collection provides a fascinating insight in the interaction of medical law and broader social changes to our bodies, illness and medical professionals.

Jonathan Herring is a Professor of Law at the University of Oxford.  
Jesse Wall is a Junior Research Fellow at Merton College, University of Oxford.

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## Informed Consent in Europe

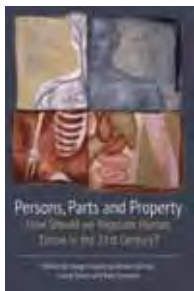
Edited by Nikolaus Forró

This book presents the results of a European study of informed consent in the context of medical interventions. Written by a team of legal experts, this is the first book to gather in one place different approaches to defining 'consent'.

Nikolaus Forró is Professor of Law at the University of Hannover.

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## Persons, Parts and Property How Should we Regulate Human Tissue in the 21st Century?

Edited by Imogen Goold,  
Jonathan Herring, Loane Skene  
and Kate Greasley

The debate over whether human bodies and their parts should be governed by the laws of property has accelerated with the pace of technological change. The common law first recognised that there could be a property interest in human tissue in some circumstances in the early 1900s, but it was not until a string of judicial decisions and statutory regulation in the 1990s and early 2000s that the place of this 'exception' was cemented. The 2009 decision of the Court of Appeal

of England and Wales in *Yearworth & Ors v North Bristol NHS Trust* added a new dimension to the debate by supporting a move towards a broader, more principled basis for finding (or rejecting) property rights in human tissue. However, the law relating to property of human bodies and their parts remains highly contested. The contributions in this volume represent a collation of the broad spectrum of analyses on offer, and a detailed exploration of the salient legal and theoretical puzzles arising out of the body-as-property question.

Imogen Goold is a Lecturer in Law at the University of Oxford and a Fellow of St Anne's College.

Jonathan Herring is Professor of Law at the University of Oxford.

Loane Skene is a Professor at the Melbourne Law School and an Adjunct Professor in the Faculty of Medicine, Dentistry and Health Sciences at the University of Melbourne.

Kate Greasley is a Junior Research Fellow in law at University College, Oxford.

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# Private International Law



## The Recovery of Maintenance in the EU and Worldwide

Edited by Paul Beaumont, Burkhard Hess, Lara Walker and Stefanie Spancken

This book grew out of a major European Union (EU) funded project on the Hague Maintenance Convention of 2007 and on the EU Maintenance Regulation of 2009. The project involved carrying out analytical research on the implementation into national law of the EU Regulation and empirical research on the first year of its operation in practice. The project also engaged international experts in a major conference on recovery of maintenance in the EU and worldwide in Heidelberg in March 2013. The

contributions in this book are the revised, refereed and edited versions of the best papers that were given at the conference. The book is divided into two parts: (i) the world - looking at the Hague Convention and (ii) the EU - looking at the Maintenance Regulation. This is the first study to look carefully at both of the new cross-border maintenance regimes globally and in Europe and to begin the examination of the practical operation of the latter regime.

**Paul Beaumont** is Professor of European Union and Private International Law and Director of the Centre for Private International Law, School of Law, University of Aberdeen.

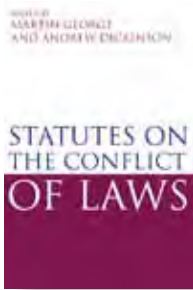
**Burkhard Hess** is the Director of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law. He is a Professor at the Universities of Heidelberg and of Luxembourg.

**Lara Walker** is a Lecturer in Law at the University of Sussex.

**Stefanie Spancken** is undergoing legal traineeship at the District Court of Münster.

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## Statutes on the Conflict of Laws

Edited by Martin George and Andrew Dickinson



*Statutes on the Conflict of Laws* is intended to provide students with all of the current, relevant UK and EU legislation encountered in the study of private international law in one clear and easy-to-use volume. The legislation is not annotated, enabling the book to be used in examinations. It has been structured and designed so that students can find the material they need quickly and efficiently; it includes separate chronological and alphabetical tables of contents.

Martin George is a Lecturer in Law at the University of Birmingham.  
Andrew Dickinson is a Fellow at St Catherine's College and a Professor at the Faculty of Law, University of Oxford.

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## Australian Private International Law for the 21st Century

Facing Outwards

Edited by Andrew Dickinson, Thomas John and Mary Keyes

A nation's prosperity depends not only on the willingness of its businesses to export goods and services, and of its citizens and residents to travel to take advantage of opportunities overseas, but also on the willingness of the businesses and citizens of other nations to cross the nation's borders to do business. Economic expansion, and parallel increases in tourism and immigration, have brought Australians more frequently into contact with the laws and legal systems of other nations. In particular, in recent years, trade with partners in the Asia-Pacific Region has become increasingly important to the nation's future. At the same time, Australian courts are faced with a growing number of disputes involving foreign facts and parties. In recognition of these developments, and the need to ensure that the applicable rules meet the needs both of transacting parties and society, the Attorney-General's Department launched in 2012 a full review of Australian rules of private international law.

This collection examines the state and future of Australian private international law against the background of the Attorney-General's review. The contributors approach the topic from a variety of perspectives (judge, policy maker, practitioner, academic) and with practical and theoretical insights as to operation of private international law rules in Australia and other legal systems.

Andrew Dickinson, formerly Professor of Private International Law at the University of Sydney, is a Fellow and Tutor of Law at St Catherine's College and Professor of Law at the Faculty of Law, University of Oxford.

Thomas John is the Head of the Private International Law and International Arbitration Section, Australian Attorney General's Department, Canberra.

Mary Keyes is Professor of Law at Griffith Law School, Griffith University.

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## Interregional Recognition and Enforcement of Civil and Commercial Judgments

Lessons for China from US and EU Law

Jie Huang

Judgment recognition and enforcement (JRE) between the US states, between EU Member States, and between mainland China, Hong Kong, and Macao, are all forms of "interregional JRE." This extensive comparative study of the three most important JRE regimes focuses on what lessons China can draw from the US and the EU in developing a multilateral JRE arrangement for mainland China, Hong Kong, and Macao.

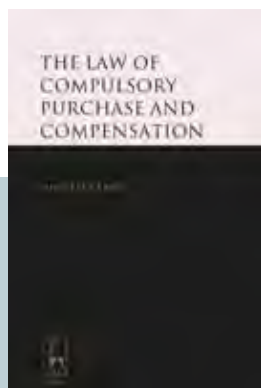
China, Hong Kong, and Macao share economic, geographical, cultural, and historical proximity to one another. The policy of "One Country, Two Systems" also provides a quasi-constitutional regime for the three regions. However, there is no multilateral JRE scheme among them, as there is in the US and the EU; and it is harder to recognise and enforce sister-region judgments in China than in the US and the EU. The book analyses the status quo of JRE in China and explores its insufficiencies; it proposes a multilateral JRE arrangement for Chinese regions to alleviate current JRE difficulties; and it also provides solutions for the macro and micro challenges of establishing a multilateral arrangement, drawing upon the rich literature on JRE regimes found in the US and the EU.

Jie Huang is an Associate Professor of Law and Associate Dean at Shanghai University of International Business and Economics School of Law and Director of the China Association of Private International Law.

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# Property Law



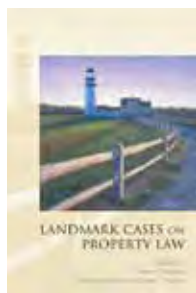
## The Law of Compulsory Purchase and Compensation

Michael Barnes QC

This book is a statement of the current law of compulsory purchase of land and compensation for that purchase. It covers all major aspects of the procedure for the compulsory acquisition of land and deals in full detail with all aspects of the law of compensation for such an acquisition. The many and diverse statutory provisions are organised into a series of chapters containing all principles and rules and there is a full analysis and explanation of the leading authorities on the subject and the principles derived from those authorities without which the subject cannot be understood.

The aim of the book is not only to explain the statutory provisions and to organise the various possible claims for compensation into different heads but also to explain and analyse the substantial body of case law which has built up and its relationship to the underlying statutory provisions. Chapters of the book are devoted to the procedure for formulating and pursuing a claim for compensation and to the valuation principles which must be applied in advancing claims. An appendix is provided by Mr Nicholas Eden FRICS, a leading valuer in the field, which contains examples of different types of compensation valuation with annotations as to how the valuations are prepared and built up. A further aim of the book is to provide where possible practical advice to public authorities and landowners involved in the process of compulsory purchase and compensation as well as to explain the legal principles.

**Michael Barnes QC** is a barrister at Wilberforce Chambers in Lincoln's Inn, Bencher of the Middle Temple and an Honorary Research Fellow of Lady Margaret Hall, Oxford.



## Landmark Cases on Property Law

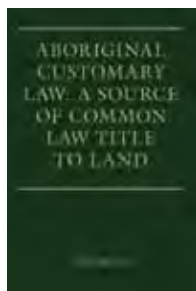
Edited by Simon Douglas,  
Robin Hickey and Emma Waring

*Landmark Cases on Property Law* explores the development of basic principles of property law in leading cases. Each paper considers a case on land, personal property or intangibles, discussing what that case contributes to the dominant themes of property jurisprudence - how are property rights acquired? What is the content of property rights? What are the limits or boundaries of property? How are property rights extinguished? Individually and collectively, the papers identify a number of important themes for the doctrinal development of property

institutions and their broader justification. These themes include: the obscure and incremental development of seemingly foundational principles, the role of instrumentalism in property reasoning, the influence of the law of tort on the scope of property doctrines, and the impact of Roman legal reasoning on the common law of property. One or more of these themes (and others) is revealed through careful case analysis in each paper, and they are collected and critically explored in the editors' introduction. This makes for a coherent and provocative collection, and ensures that *Landmark Cases on Property Law* will be lively and essential reading for scholars, practitioners, and all those interested in the development of property principles at law.

Simon Douglas is a Fellow and Tutor in Law at Jesus College, Oxford University. Robin Hickey is a Senior Lecturer in Law at Queen's University Belfast. Emma Waring is a Lecturer in Law at York Law School, The University of York.

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## Aboriginal Customary Law: A Source of Common Law Title to Land

Ulla Secher

Described as "ground-breaking" in Kent McNeil's Foreword, this book develops an alternative approach to conventional Aboriginal title doctrine. It explains that aboriginal customary law can be a source of common law title to land in former British colonies, whether they were acquired by settlement or by conquest or cession from another colonising power. The doctrine of common law aboriginal customary title provides a coherent approach to the source, content, proof and protection of Aboriginal land rights which overcomes problems arising from the law as currently understood and leads to more just results. The doctrine's applicability in Australia, Canada and South Africa is specifically demonstrated. While the jurisprudential underpinnings for the doctrine are consistent with fundamental common law principles, the author explains that the Australian High Court's decision in *Mabo* provides a broader basis for the doctrine: a broader basis which is consistent with a re-evaluation of case-law from former British colonies in Africa, as well as from the United States, New Zealand and Canada. In this context, the book proffers a reconceptualization of the Crown's title to land in former colonies and a reassessment of conventional doctrines, including the doctrine of tenure and the doctrine of continuity.

Ulla Secher is a Visiting Fellow with the Faculty of Law at the University of New

South Wales, Sydney, Australia. She was admitted as a Barrister of the Supreme Court of Queensland in 1998.

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## Consequences of Impaired Consent Transfers

A Structural Comparison of  
English and German Law

Birke Häcker

Legal rules and principles do not exist in isolation, but form part of a system. In this structural comparison between English and German law, Birke Häcker explores the rules and principles governing impaired consent transfers of movable property and their reversal in two- and three-party situations.

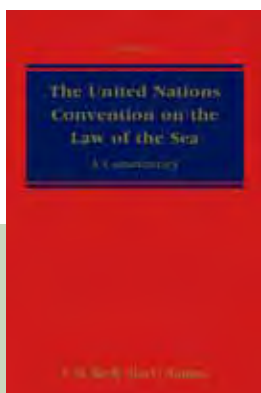
This book is a re-publication of a work first published by Mohr Siebeck in Germany.

Birke Häcker is a Senior Research Fellow at the Max Planck Institute for Tax Law and Public Finance, Munich, and a Fellow of All Souls College, Oxford.

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# Public International Law



## The United Nations Convention on the Law of the Sea

A Commentary

Alexander Prölss

The United Nations Convention on the Law of the Sea (UNCLOS) entered into force in 1994 and has since been ratified by about 160 states, including all the Member States of the EU and the EU itself. The Convention defines the rights and duties of national states with regard to the use of the seas. UNCLOS consolidates customary international law and various Conventions previously adopted by the international community.

This Treaty, the most comprehensive ever concluded, is often referred to as 'the constitution for the seas'. This Commentary focuses particularly on the interaction between UNCLOS and the European legal order, for example in the field of the prevention or the reduction of environmental pollution and the fair distribution of natural resources.

**Alexander Prölss** is Professor of Public International Law at the University of Trier.

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## International Law and Foreign Affairs in English Courts

Second Edition

Shaheed Fatima

Published in 2005, this was the first practitioners' book (written by a practitioner and for other practitioners regardless of their specialist area of practice) to deal with how international law is, and can be, used in English courts in a wide range of fields, ranging from criminal law to family law to commercial law. More than five years on, and in the light of the burgeoning case law, this second edition provides a much needed, completely updated and expanded review of the topic. The new edition continues to provide, in a distilled format, the relevant principles of law and their application in this area. It also now includes further commentary and analysis to guide practitioners' use and application of international law in English courts.

Shaheed Fatima is a Barrister at Blackstone Chambers, London.

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## Select Proceedings of the European Society of International Law, Volume 4, 2012

Edited by Mariano J Aznar and Mary E Footer

This is the fourth in the Series of Select Proceedings of the European Society of International Law (ESIL) featuring the most important and interesting papers presented at the previous ESIL Conference (Valencia, 2012). As usual, the best papers from that conference have been re-written, edited and drawn together by the two editors to present a perspective on what is a flourishing forum for the discussion of new ideas and scholarship on international law.

Mariano J Aznar is Professor of Public International Law at the University Jaume I. Mary E Footer is Professor of International Economic Law at the University of Nottingham, School of Law.

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## Irish Yearbook of International Law, Volume 7, 2012

Edited by Fiona de Londras and Siobhán Mullally

The *Irish Yearbook of International Law* is intended to stimulate further research into Ireland's practice in international affairs and foreign policy, filling a gap in existing legal scholarship and assisting in the dissemination of Irish thinking and practice on matters of international law. On an annual basis, the *Yearbook* presents peer-reviewed academic articles and book reviews on general issues of international law. Designated correspondents provide reports on international law developments in Ireland, Irish practice in international fora and the European Union, and the practice of joint North-South implementation bodies in Ireland. In addition, the *Yearbook* reproduces documents that reflect Irish practice on contemporary issues of international law.

Publication of the *Irish Yearbook of International Law* makes Irish practice and *opinio juris* more readily available to Governments, academics and international bodies when determining the content of international law. In providing a forum for the documentation and analysis of North-South relations the *Yearbook* also makes an important contribution to post-conflict and transitional justice studies internationally.

As a matter of editorial policy, the *Yearbook* seeks to promote a multilateral approach to international affairs, reflecting and reinforcing Ireland's long-standing commitment to multilateralism as a core element of foreign policy.

Further details of the *Yearbook* can be seen at: [www.hartjournals.co.uk/iyil](http://www.hartjournals.co.uk/iyil).

Fiona de Londras is Professor of Law at Durham University.  
Siobhán Mullally is Professor of Law at University College Cork.

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Series: Irish Yearbook of International law



## Institutionalised International Law

Matthias Ruffert and Christian Walter

The importance of the law of international organizations is continually increasing. This textbook, first published in German, explains and analyses not only the structures of international organizations in general, but also focuses on the interplay between the creation of institutional structures and important substantive areas of public international law. Thus, in the first and second parts of the book the general aspects of the law of international organizations are surveyed, whereas in the third part international security, human rights protection, trade, development and environmental protection are analyzed in terms of the interplay between substantive and institutional law. This third part is built on the assumption that the law of international organizations needs to be studied "in action", ie by looking at highly institutionalized areas of international law as a way of analyzing the mutual influences between institutional and substantive international law. In fact all important parts of international law are today institutionalized in different international organizations, a phenomenon which is reflected in the title.

Up to now, there has been no other book on international law which brings together institutional and substantive aspects in a comparable manner. This textbook is aimed at students of the law of international organizations but also to students in the social sciences, above all, political science. It will also be useful to practitioners in the field of international institutions.

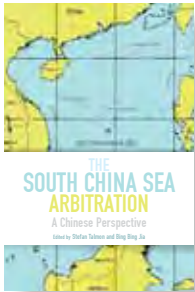
Matthias Ruffert is Professor of Public, European and International Law at the Friedrich-Schiller-University Jena and Judge at the Thüringer Oberverwaltungsgericht, Weimar (Highest Administrative Court of Thuringia). Christian Walter is Professor of Public Law and International Law at the Ludwig-Maximilians University in Munich.

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## The South China Sea Arbitration

A Chinese Perspective

Edited by Stefan Talmon and Bing Bing Jia

In January 2013, the Philippines instituted arbitral proceedings against the People's Republic of China under the United Nations Convention on the Law of the Sea with regard to disputes between the two countries in the South China Sea (South China Sea Arbitration). In February 2013 the PRC formally expressed its opposition to the proceedings, making it clear that it will not participate and that its position will not change. Therefore, over the next year and a half the tribunal will hear the Philippines' case but the Chinese position will go unheard. The tribunal is, however, under an obligation to satisfy itself that it has jurisdiction over the dispute and that the claims brought by the Philippines are well founded in fact and law.

This book aims to offer a Chinese perspective on some of the issues to be decided by the tribunal, serving as a kind of amicus brief advancing possible legal arguments on behalf of the absent respondent. The book does not deal with the merits of the disputes but focuses on the questions of jurisdiction, admissibility and other objections which the tribunal will have to decide as a preliminary matter, showing that there are insurmountable preliminary objections to the tribunal deciding the case on the merits.

The book brings together scholars from mainland China, Taiwan and Europe united by a common interest in the law of the sea and disputes in the South China Sea.

Stefan Talmon is Co-Director of the Institute for Public International Law at the University of Bonn.

Bing Bing Jia is Professor of of International Law in the Law School at Tsinghua University, Beijing.

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## Captured in War

Lawful Internment in Armed Conflict

Els Debuf

This book examines the continued relevance and adequacy of the existing legal framework for internment in warfare, identifies its shortcomings and proposes possible avenues to remedy them. It offers answers to fundamental questions such as who may be lawfully interned in armed conflict, on what legal basis, for what reasons and for how long. Starting from the premise that internment in armed conflict cannot be lawful under one branch of international law while at the same time unlawful under another the book offers a fresh view of the interaction between the simultaneously applicable norms of international humanitarian and human rights law. Heeding calls for the clarification and modernization of the existing legal framework for internment in armed conflict, the author also puts forward concrete proposals for normative developments that seek to reconcile both the practical realities of contemporary armed conflict and significant developments in international law that affirm the right to liberty as one of the most fundamental attributes of any human being.

Els Debuf is a Legal Advisor at the International Committee of the Red Cross.

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## Critical Legal Perspectives on Global Governance

Liber Amicorum David M Trubek

Edited by Gráinne de Búrca, Claire Kilpatrick and Joanne Scott

This book explores the emergence of a global critical discourse on law and its application to global governance. As law becomes ever more implicated in global governance and as processes related to and driven by globalisation transform legal systems at all levels, it is important that critical traditions in law adapt to the changing legal order and problématique. The book brings together critical scholars from the EU, and North and South America to explore the forms of law that are emerging in the global governance context, the processes and legal roles that have developed, and the critical discourses that have been formed. By looking at critical appraisals of law at the global, regional and national level, the links among them, and the normative implications of critical discourses, the book aims to show the complexity of law in today's world and demonstrate the value of critical legal thought for our understanding of issues of contemporary governance and regulation.

Scholars from many countries contribute critical studies of global and regional institutions, explore the governance of labour and development policy in depth, and discuss the changing role of lawyers in global regulatory space.

Gráinne de Búrca is Florence Ellinwood Allen Professor of Law at NYU Law School.

Claire Kilpatrick is Professor of International and European Labour and Social Law at the European University Institute.

Joanne Scott is Professor of European Law at University College London.

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## Child Soldiers and International Law

C A Waschefort

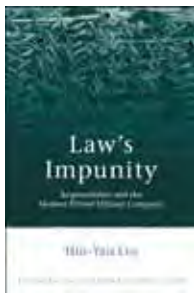
This book commences with an analysis of the current state of child soldiering internationally. Thereafter the proscriptive content of contemporary norms on the prohibition of the use and recruitment of child soldiers is evaluated, so as to determine whether these norms are capable of better enforcement. An 'issues-based' approach is adopted, in terms of which no specific regime of law, such as international humanitarian law (IHL), is deemed dominant. Instead, universal and regional human rights law, international criminal law and IHL are assessed cumulatively, so as to create a mutually reinforcing web of protection. Ultimately, it is argued that the effective implementation of child soldier prohibitive norms does not require major changes to any entity or functionary engaged in such prevention; rather, it requires the constant reassessment and refinement of all such entities and functionaries, and here, some changes are suggested. International judicial, quasi-judicial and non-judicial entities and functionaries most relevant to child soldier prevention are critically assessed. Ultimately the conclusions reached are assessed in light of a case study on the use and recruitment of child soldiers in the Democratic Republic of the Congo.

C A Waschefort is an Associate Professor of International Law at the University of South Africa.

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Series: Studies in International Law



## Law's Impunity

### Responsibility and the Modern Private Military Company

Hin-Yan Liu

When faced with those who act with impunity, we seek the protection of law. We rely upon the legal system for justice, from international human rights law that establishes common standards of protection, to international criminal law that spearheads efforts to end impunity for the most heinous atrocities. While legal processes are perceived to combat impunity, and despite the ready availability of the law, accountability often remains elusive. What if the law itself enables impunity?

*Law's Impunity* asks this question in the context of the modern Private Military Company (PMC), examining the relationship between law and the concepts of responsibility and impunity. This book proposes that ordinary legal processes do not neutralise, but rather legalise impunity. This radical idea is applied to the abysmal record of human rights violations perpetrated by the modern PMC and the shocking absence of accountability. This book demonstrates how the law organises, rather than overcomes, impunity by detailing how the modern PMC exploits ordinary legal processes to systematically exclude itself from legal responsibility. Thus, *Law's Impunity* offers an alternative to conventional thinking about the law, providing an innovative approach to assess and refine the rigor of legal processes in the on-going quest to end impunity.

Hin-Yan Liu is Research Fellow in the Academy of European Law at the European University Institute, and Professor of International Human Rights at NYU Florence.

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## The Chagos Islanders and International Law

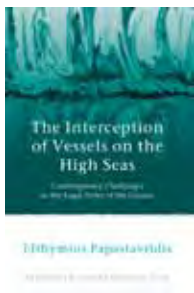
Stephen Allen

In 1965, the UK excised the Chagos Islands from the colony of Mauritius to create the British Indian Ocean Territory (BIOT) in connection with the founding of a US military facility on the island of Diego Garcia. Consequently, the inhabitants of the Chagos Islands were secretly exiled to Mauritius, where they became chronically impoverished. This book considers the resonance of international law for the Chagos Islanders. As BIOT constitutes a 'non-self-governing territory', it explores the extent to which the right of self-determination, indigenous land rights and a range of obligations contained in applicable human rights treaties could support the Chagossian right to return to BIOT. However, the rights of the Chagos Islanders are premised on the assumption that the UK possesses a valid sovereignty claim over BIOT. The evidence suggests that this claim is questionable and it is disputed by Mauritius. Consequently, the Mauritian claim threatens to compromise the entitlements of the Chagos Islanders in respect of BIOT as a matter of international law. This book illustrates the ongoing problems arising from international law's endorsement of the territorial integrity of colonial units for the purpose of decolonisation at the expense of the countervailing claims of colonial self-determination by non-European peoples that inhabited the same colonial unit. The book uses the competing claims to the Chagos Islands to demonstrate the need for a more nuanced approach to the resolution of sovereignty disputes resulting from the legacy of European colonialism.

Stephen Allen is a Senior Lecturer in Law at Queen Mary, University of London.

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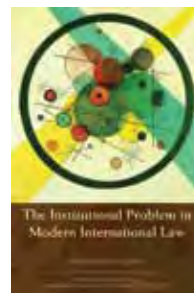
The principal aim of this book is to address the legal questions arising from the 'right of visit on the high seas' in the 21st century. This is the most significant exception to the fundamental principle of the freedom of the high seas, a freedom that has been challenged by a sharp increase in interceptions to counter the threats of international terrorism and WMD proliferation and to suppress transnational organised crime.

Efthymios Papastavridis is a part-time Lecturer, University of Thrace, Faculty of Law, Research Fellow at the Academy of Athens and Special Adviser at the Hellenic Ministry of Foreign Affairs, Directorate of UN and other International Organizations.

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## The Institutional Problem in Modern International Law

Richard Collins

Since the end of the nineteenth century, international law has been widely understood as an autonomous legal order, similar in nature if, importantly, not in structure to law within the state. Whilst this understanding has bolstered the professional identity of international legal practice, it has come at the price of a perpetual sense of structural deficiency over the decentralised institutional nature of the international legal order. To maintain the claim to legal autonomy, it has been common to read into the international legal order forms of normative hierarchy accompanied by functional constitutional substitutes (of a legislative, executive, or adjudicative nature). In this book, the author engages critically with the self-defeating nature of these constitutional substitutes, explaining the irresolvable nature of this "institutional problem" as well as the shortcomings of the kind of Rule of Law idealism from which the problem arises in the first place. Instead, the book sets out a plea for international lawyers to understand the purpose and potential of international law on its own terms, whilst at the same time challenging the coherence of the domestic legal paradigm against which its institutional structures are commonly found wanting.

Richard Collins is a Lecturer in Law at the University of Sheffield.

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The book will appeal to academics and post-graduate students, practitioners working in EU and international law, policy makers within the EU and national administrations, and officials in foreign affairs ministries.

Panos Koutrakos is Professor of European Union Law at City University of London. Achilles Skordas is Professor of International Law at the University of Bristol.

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## International Law for Common Goods

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International law has long been dominated by the state. But it has become apparent that this bias is unrealistic and untenable in the contemporary world where the rise of the notion of common goods challenges this dominance. These common goods - typically values (like human rights, rule of law, etc) or common domains (the environment, cultural heritage, space, etc) - speak to an emergent international community beyond the society of states and the attendant rights and obligations of non-state actors.

This book details how three key areas of international law - human rights, culture and the environment - are pushing the boundaries in this field. Each category is of current and ongoing significance in legal and public discourse, as illustrated by the Syrian conflict (human rights and international humanitarian law), the destruction of mausoleums and manuscripts in Mali (cultural heritage), and the Deepwater Horizon oil spill (the environment). Each exemplifies the need to move beyond a state-focused idea of international law.

This timely volume explores how the idea of common goods, in which rights and obligations extend to individuals, groups and the international community, offers one such avenue and reflects on its transformative impact on international law.

Federico Lenzerini is Professor of International and EU Law at the Università degli Studi di Siena.

Ana Filipa Vrdoljak is Professor of Law at the University of Technology, Sydney.

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## Indigenous Peoples in International and Comparative Law

Thalia Anthony, Larissa Behrendt and Ben Saul



This book provides a comprehensive account of the indigenous peoples in international law, with additional comparative law perspectives. While scholarly in approach, the book is intended as a textbook for students, and therefore covers a wide range of topics relevant to the study of indigenous peoples.

The book first considers the theory and practice of international law in encounters between indigenous peoples and European colonial powers, investigating how domestic legal systems applied, ignored or challenged international law during the colonial era. It examines prevailing legal doctrines governing acquisition of title to territory, underlying concepts of sovereignty, authority and self-determination, and competing approaches to conceptualising indigenous legal interests. The book looks at how international law has enabled indigenous peoples to challenge their treatment in national legal systems, particularly through the human rights machinery and political organs of the UN. Various mechanisms for reparation for historical injustices are evaluated, and the limitations of strategies of redress assessed.

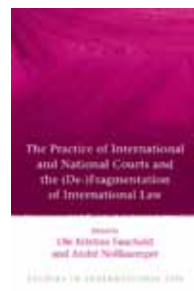
The book covers the experiences of indigenous peoples across Australasia, America and Canada, Africa, the Middle East and Europe, combining discussion of the law in practice with a theoretical account of indigenous claims, rights and remedies, unresolved issues and possible future directions for reform.

Thalia Anthony is a Senior Lecturer in Law at the University of Technology, Sydney. Larissa Behrendt is the Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

Ben Saul is Associate Professor and Director of the Sydney Centre for International Law at Sydney University.

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Of the many challenges that society faces today, possibly none is more acute than the security of ordinary citizens when faced with a variety of natural or man-made disasters arising from climate and geological catastrophes, including the depletion of natural resources, environmental degradation, food shortages, terrorism, breaches of personal security and human security, or even the global economic crisis. States continue to be faced with a range of security issues arising from contested territorial spaces, military and maritime security and security threats relating to energy, infrastructure and the delivery of essential services. The theme of the book encompasses issues of human, political, military, socio-economic, environmental and energy security and raises two main questions. To what extent can international law address the types of natural and man-made security risks and challenges that threaten our livelihood, or very existence, in the 21st Century? Where does international law fall short in meeting the problems that arise in different situations of insecurity and how should such shortcomings be addressed?

Mary E Footer is Professor of International Economic Law, Julia Schmidt is Research Fellow, and Nigel D White is Professor of Public International Law, all at the University of Nottingham.

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Editor in Chief, Jarna Petman, is Senior Lecturer in International Law and Deputy Director of the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki.

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Sari Kouvo is Senior Program Associate with the International Centre for Transitional Justice and Co-Director of the Afghanistan Analysts Network. Zoe Pearson is a Lecturer in the School of Law, Keele University.

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## Statelessness

The Enigma of the International Community

William E Conklin

'Statelessness' is a legal status denoting lack of any nationality, a status in which the otherwise normal link between an individual and a state is absent. The increasingly widespread problem of statelessness has profound legal, social and economic consequences but also gives rise to the paradox of an international community which claims universal standards for all natural persons while allowing its member states to allow statelessness to occur. In this powerfully argued book, Conklin critically evaluates traditional efforts to recognise and reduce statelessness. The problem, he argues, rests in the obligatory nature of law, domestic or international. By closely analysing a broad spectrum of court and tribunal judgements from many jurisdictions, Conklin explains how confusion has arisen between two discourses as to the nature of the international community. One discourse describes a community in which international law justifies the state's freedom to confer, withdraw or withhold one's nationality. This international community incorporates a state's freedom over nationality matters, risking statelessness. The other discourse highlights a legal bond of socially experienced relationships. Such a bond, judicially referred to as 'effective nationality', is binding upon all states, and where such a bond exists, harm to a stateless person represents harm to the international community as a whole.

William E Conklin is a Professor in the Faculty of Law and Faculty of Graduate Studies, University of Windsor.

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## Convention on the Prevention and Punishment of the Crime of Genocide

### A Commentary

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The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) has a special standing in international law, as well as in international politics. For 60 years the crime of genocide has been recognised as the most horrendous crime in international law, famously designated the 'crime of crimes'. On the occasion of the 60th anniversary of its adoption the UN High Commissioner for Human Rights stated that 'genocide is the ultimate form of discrimination'. In the same context the chief prosecutor at the International Criminal Court described the Genocide Convention as a 'visionary and founding text for the Court'. The Convention has influenced the subsequent development of many different areas of international law. For example, the 1951 Advisory Opinion on the Genocide Convention enabled the International Court of Justice to shape the modern regime of reservations to treaties. More recently the prohibition against genocide has become a crucial pillar of international criminal law, with genocide being one of the core crimes falling under the jurisdiction of the UN ad hoc tribunals, the Extraordinary Chambers in the Courts of Cambodia, and the permanent International Criminal Court since the 1990s.

In this work the 19 provisions of the Convention are analysed article-by-article, with abundant references to state practice and case law.

Christian Tams is Professor of International Law at the University of Glasgow.  
Lars Berster is Senior Research Fellow at the University of Cologne.  
Björn Schiffbauer is a Research Fellow at the University of Cologne.

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## Decisions of the Arbitration Panel for In Rem Restitution, Volume 6

Edited by Josef Aicher,  
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August Reinisch

The series *Decisions of the Arbitration Panel for In Rem Restitution* documents a fundamental element of Austria's most recent compensation measures dealing with the consequences of the National Socialist era. The possibility of in rem restitution of property seized during the National Socialist era which is now publicly-owned was provided for by the Washington Agreement of 2001. The Arbitration Panel for In Rem Restitution, established with the General Settlement Fund for Victims of National Socialism in Vienna, decides on applications for restitution. For the most part, the applications concern real estate that was confiscated between 1938 and 1945, was publicly-owned on the Agreement cut off day (17 January 2001) and in many cases had already been the subject of restitution proceedings after 1945.

Since 2003, the Arbitration Panel has decided on a great number of applications and has recommended the restitution of property to the former owners or their legal successors in several cases. In the course of these decisions based on the General Settlement Fund Law, the Arbitration Panel has developed a complex case law.

Volume 6 contains twelve decisions of the Arbitration Panel from 2008 and 2009, each in the German original and with an English translation.

Joseph Aicher is Professor at the Institute for Corporate and Economic Law at the University of Vienna.

Erich Kussbach is Honorary Professor of Humanitarian International Law at the University of Linz.

August Reinisch is head of the section for International Law and International Relations of the Department for European, International and Comparative Law and Vice Dean of the Law Faculty at the University of Vienna.

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## Sanctions and Embargoes in International Law

### Law and Practice

Edited by Matthew Happold and  
Paul Eden

In recent years sanctions have become an increasingly popular tool of foreign policy, not only at the multilateral level (at the UN), but also regionally (the EU, in particular) and unilaterally. The nature of measures imposed has also changed: from comprehensive sanctions regimes (discredited since Iraq in the 1990s) to 'targeted' or 'smart' sanctions, directed at specific individuals or entities (through asset freezes and travel bans) or prohibiting particular activities (arms embargoes and export prohibitions).

Bringing together scholars and government and private practitioners, *Sanctions and Embargoes in International Law* provides an overview of recent developments and an analysis of the problems that they have engendered. Chapters examine the contemporary practice of the various actors, and the legality (or otherwise) of their

activities. Issues considered include the human rights of persons targeted, and the mechanisms established to challenge their listing; as well as, in cases of sanctions imposed by regional organizations and individual States, the rights of third States and their nationals.

The book will be of interest to students, academics and practitioners of international law and politics.

Matthew Happold is Professor of Public International Law at the University of Luxembourg and a barrister at 3 Hare Court, London.

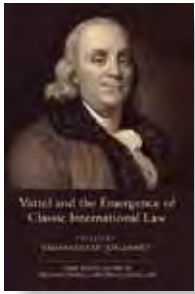
Paul Eden is a Lecturer in Law at the University of Sussex.

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## Vattel and the Emergence of Classic International Law

Emmanuelle Jouannet  
Translated by Gina Bellande  
and Robert Howse

This highly original work by leading French scholar Emmanuelle Jouannet takes a fresh look at the emergence of classical international law and provides an original and decisive reinterpretation. According to the modern and conventional account Grotius, and his predecessors the Spanish jurists, are credited as the

'fathers' of the modern *ius gentium*. But this picture of history is now both inaccurate and incomplete. With rare erudition based on an exhaustive analysis of the foundational concepts and principal texts of the great jurists of the period, Jouannet shows that it was only during the 18th century Enlightenment that a genuine doctrine of international law emerged. In particular Jouannet focuses on the work of a Swiss jurist Emerich de Vattel (1714-1767), for long a forgotten figure, showing how his ideas engendered fresh understanding of what international law meant, and stimulated the fundamental debates that international lawyers are still engaged in today.

Emmanuelle Jouannet is a Professor of Law at the University of Paris 1, Pantheon-Sorbonne.

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conceptually and empirically distinct. Instead this rich, multidisciplinary collection engages with a critical theme - the idea of regulating through a social sphere - recognising the embeddedness of economic transactions within a social and political landscape.

A key strength of this book is its integration of three distinct areas of scholarship: Polanyi's economic sociology, regulation studies and socio-legal studies of transnational hazards. The collection is distinct in that it links the study of specific transnational risk regulatory regimes back to a social-theoretical discussion about economy-society interactions, informed by Polanyi's work. Each of the chapters addresses the way in which economics, as well as economic and social regulation, can never be understood separately from the social, particularly in the transnational context.

**Bettina Lange** is a Lecturer in Law and Regulation at the University of Oxford, and Director of Graduate Studies for the Centre for Socio-Legal Studies, Oxford.

**Fiona Haines** is an Associate Professor in the School of Social and Political Sciences at the University of Melbourne.

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