

# Foreword

**Malcolm A. Clarke**

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Leander D. Loacker is a Senior Lecturer in Civil Law and Civil Procedure Law at the University of Zurich; however I first encountered him in 2004 in the University of Innsbruck and later in the University of Mannheim on the Drafting Committee working on the Principles of European Insurance Contract Law (PEICL), to which reference is made at many points in this book. Initially his role was rather administrative but he gradually became interested in and knowledgeable about comparative insurance law. His interest was triggered in Mannheim and then developed by his MPhil with Professor John Birds, who was also working on the Committee, at the University of Manchester. When he left Manchester he continued to reflect on the subject and the result of his reflection is this book, which focuses on one of the issues with which the Drafting Committee was concerned. In the same period his scholarship went from strength to strength and, as the work of the Drafting Committee came to an end in the early part of 2014, his personal contribution to the discussion of the law and to the PEICL project was significant.

The present book starts from the perspective of people in the mass risk insurance sector where inexperienced customers conclude contracts, of which they usually have little understanding and which turn out later to be unsuitable. Such people suffer from what has been called a ‘chronic information deficit’.<sup>1</sup> For many years the status quo was defended as being sufficiently protected by the special emphasis placed on ‘utmost good faith’ as the bedrock of insurance contracts. Moreover, although from the very beginning the duty of good faith was premised to be bilateral, the main emphasis of case law, legislative reform, and legal literature was still on the duties of the applicant, the eventual insured. In

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<sup>1</sup> See the Preface to this book.

comparison, the insurer's duties were largely ignored. From this perspective, the book looks at the insurer's duties as they stand or should stand today.

The direction and clarity of the author's argument is commendably clear. Thus it is clear at the outset that he is mainly concerned with pre-contractual information duties as they affect consumers, and thus standard form contracts – although, he argues, individualised information duties, will have a significantly more important part to play in the future, and he gives some consideration to these.

The central section of the book is in three parts. The first looks at insurance from an economic perspective, notably, the economics of the Chicago school and Richard Allen Posner (currently a judge on the United States Court of Appeals) to which the author brings the critical perspective of behavioural law and economics, as perceived in Austria and Germany.

In the second part, the book seeks to examine the way in which the relevant information model is implemented in English insurance contract law and compares it with the corresponding rules found in German law and, more recently, in the proposed Principles of European Insurance Contract Law (PEICL). Then, instead of merely describing these rules, the book seeks to identify the basic economic considerations that can be recognised behind them. Finally, it identifies the limits inherent in these rules and makes recommendations for their improvement with specific proposals to realise that improvement. In the third and shortest part, the author draws out the major lessons of the study.

The result is that the serious reader will find here a first class monograph, well-structured and scholarly, with a clear perspective on some important issues arising in the law of insurance contracts today.

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