## Index

<table>
<thead>
<tr>
<th>Page Numbers</th>
<th>Entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic lawyers</td>
<td>ix, xxv–xxix, xlii, 1–2, 3, 153, 160, 191</td>
</tr>
<tr>
<td>Germany</td>
<td>156–8</td>
</tr>
<tr>
<td>See also authority of DCFR</td>
<td></td>
</tr>
<tr>
<td>Acquis communautaire</td>
<td>xii, xvi, xvii, xlii, 11, 16, 150, 180, 181, 182, 183</td>
</tr>
<tr>
<td>Acquis commun and 163–4</td>
<td></td>
</tr>
<tr>
<td>Costs of lawmaking</td>
<td>186, 187</td>
</tr>
<tr>
<td>DCFR and revision of</td>
<td>99, 100</td>
</tr>
<tr>
<td>Pecl 39, 162</td>
<td></td>
</tr>
<tr>
<td>Acquis Group</td>
<td>x, xiii, xvi, xx, 2, 5, 148, 150, 160–161, 163, 167</td>
</tr>
<tr>
<td>Adeneler case</td>
<td>73</td>
</tr>
<tr>
<td>Advertising</td>
<td>xx, xxxv</td>
</tr>
<tr>
<td>Argawal, S.</td>
<td>109</td>
</tr>
<tr>
<td>Agency, commercial</td>
<td>60, 114, 120, 121, 148, 162</td>
</tr>
<tr>
<td>Air passenger rights</td>
<td>65–6</td>
</tr>
<tr>
<td>Ajani, G.</td>
<td>5, 6, 7</td>
</tr>
<tr>
<td>Albath, L.</td>
<td>13</td>
</tr>
<tr>
<td>Alpa, G.</td>
<td>ix, 10</td>
</tr>
<tr>
<td>Anchoring effects</td>
<td>191</td>
</tr>
<tr>
<td>Angonese case</td>
<td>59, 62</td>
</tr>
<tr>
<td>Anschütz, G.</td>
<td>157</td>
</tr>
<tr>
<td>Anti-discrimination see non-discrimination</td>
<td></td>
</tr>
<tr>
<td>Applicable law, (D)CFR as</td>
<td>xxxi–xxxii, 177–8, 203–5, 206–7, 208, 209, 210, 216</td>
</tr>
<tr>
<td>Argentina</td>
<td>138</td>
</tr>
<tr>
<td>Aristotle</td>
<td>87</td>
</tr>
<tr>
<td>Arnall, A.</td>
<td>67</td>
</tr>
<tr>
<td>Arrowsmith, S.</td>
<td>xxii</td>
</tr>
<tr>
<td>Atiyah, P.S.</td>
<td>138</td>
</tr>
<tr>
<td>Authority of DCFR</td>
<td>147–50</td>
</tr>
<tr>
<td>CFR process</td>
<td></td>
</tr>
<tr>
<td>Authority of legal sources and concept of law</td>
<td>154–8</td>
</tr>
<tr>
<td>Norms</td>
<td>158</td>
</tr>
<tr>
<td>Private codifications and the law</td>
<td>159–61</td>
</tr>
<tr>
<td>Private law, codifications and the state</td>
<td>151–3</td>
</tr>
<tr>
<td>Conclusion</td>
<td>166–7</td>
</tr>
<tr>
<td>Reference text</td>
<td>161–2</td>
</tr>
<tr>
<td>Doctrinal petrification and normative vagueness</td>
<td>161, 165–6</td>
</tr>
<tr>
<td>Nine ‘text masses’</td>
<td>161, 162–3</td>
</tr>
<tr>
<td>No clear foundation/vision</td>
<td>161, 163–4</td>
</tr>
<tr>
<td>Autonomy, private</td>
<td>78–9, 87, 89</td>
</tr>
<tr>
<td>DCFR: no clear foundation/vision</td>
<td>164</td>
</tr>
<tr>
<td>Legal innovation</td>
<td>184–5</td>
</tr>
<tr>
<td>Ayres, I.</td>
<td>173, 188</td>
</tr>
<tr>
<td>Azzariti, G.</td>
<td>19</td>
</tr>
<tr>
<td>B2B contracts</td>
<td>xiv, xvii, xx, xxxiii, xxxix, 10, 15, 30, 32–3</td>
</tr>
<tr>
<td>Empirical evidence: long-term distribution contracts</td>
<td>114–21, 122</td>
</tr>
<tr>
<td>Optional instrument, party choice and mandatory/default rules</td>
<td>206–7, 208, 211–12, 213, 216, 217–18</td>
</tr>
<tr>
<td>B2C contracts</td>
<td>xiv, xvii, xx, xxxiii, xxxvii, xxxix, 10, 15, 30, 32–3</td>
</tr>
<tr>
<td>Empirical evidence</td>
<td>104–14, 122</td>
</tr>
<tr>
<td>Optional instrument, party choice and mandatory/default rules</td>
<td>208, 209–10, 213, 216</td>
</tr>
<tr>
<td>Bachmann, G.</td>
<td>13, 184</td>
</tr>
<tr>
<td>Baldus, C.</td>
<td>189</td>
</tr>
<tr>
<td>Bar-Gill, O.</td>
<td>109, 111</td>
</tr>
<tr>
<td>Barcellona, P.</td>
<td>17</td>
</tr>
<tr>
<td>Barendrecht, M.</td>
<td>xiv, 163</td>
</tr>
<tr>
<td>Barnett, R.E.</td>
<td>215</td>
</tr>
<tr>
<td>Bartsch case</td>
<td>80–81</td>
</tr>
<tr>
<td>Basedow, J.</td>
<td>x, xviii, xxiii, xxxv, 58, 60, 68, 77, 78–9, 80, 81, 83, 86, 87, 88</td>
</tr>
<tr>
<td>Beale, H.</td>
<td>28, 36, 46, 176, 177, 178, 179, 181, 182, 183, 185, 186, 187, 190</td>
</tr>
<tr>
<td>Beales III</td>
<td>J, 115, 117, 119</td>
</tr>
</tbody>
</table>
Beck, U. 93
behavioural economics xxix, 40, 109–10
see also empirical evidence
Beljin, S. xxi, xxii
Bellantuono, G. xviii
Ben-Shahar, O. 112, 114, 190
Benabou, R. 108
Berkowitz, D. 188
Berman, H.J. 153
best-solution approach 6, 7, 182–3, 185, 187, 190, 191, 192
Betti, E. 4, 24
Birchler, U. 187
Blair, R. 119
Blanc, D. 2
‘blue button’ xxx–xxxi, 216–19
Bodenheimer, E. 152
Böhm, F. 127
Bosman case 59, 62
bounded rationality 105–6, 108
Braun, J. 152
Brickley, J. 115–16, 118–19
Bridge, M. 31, 46
Brödermann, E. 13
Brown, T. 106
Brownsword, R. 31
Brüggemeier, G. xi, xv
Busch, D. 150
Cafaggi, F. xi, xii, xiii, xiv, xv, xvi, xvii, xviii, xxiii, xxxi, xxxii, xxxiii, xxxiv, xxxv, xxxvi, xxxvii, xxxviii, xli, 93, 95
Calderai, V. 26
Calvert, R. 187
Camerer, C. 104
Cameron, P. xvii
Canaris, C.-W. 150, 164
Canivet, G. 182
capital market law xviii–xix, 42
Cappellini, P. 16
Caroni, P. 152
Carrasco, A. 36
Casella, M. 26
Cashin Ritaine, E. 163
Cassis de Dijon case 57
Cervantes, V. 150, 160
Chamboredon, A. 5
Charter of Fundamental Rights
Art. 20: equality before the law 17
Art. 21: non-discrimination 17, 77–8
Art. 28: collective action 64
Art. 51: scope 33–4, 78
rights and principles 33–4
Cheffins, B. 175
Cherednychenko, O. 12
Chile 138
China xv
civil law 7, 28, 153, 154, 155, 156, 159, 213
Hayek 127, 142
Classen, C.D. 157
co-regulation xxxi, xxxiv, xxxv
Coase, R. 41
Codorniú case 77
Coing, H. 152
Coleman, J. 173
collective redress xi, xxxvi–xli
Collins, H. xxxi, xxxiv, xxxvi, xxxviii, 36, 51, 134, 142–3, 179
Collins, Phil case 78
commercial practices law xix–xx, xxv, 64–5
Commission v. France 61
common law xxviii, xxx, 24–5, 28, 30–32, 127, 142, 153, 213
commutative justice xxx, 9, 19, 87–8
company law xix, 9, 39, 41, 42, 46–7, 60, 68
comparative law xii, xiv, 39, 50, 54, 93, 96–7, 179–80, 186, 187–8
competition see regulation and competition
competition law xx, xxxiii, xl, 42, 49, 50, 51, 189, 206
block exemptions xxi
Hayek 128
public/private divide in European law 58, 61, 62, 64–5, 66–7, 76
competition of legal ideas 36–8, 55, 99, 100
core questions or overall solutions 53–4
framework for 55
monopolies and their trend to externalise 52–3
why competition?
methods and approaches unclear 38–41
modern questions not approached so far 48–52
subject matter unclear 41–8

Hans-W. Micklitz and Fabrizio Cafaggi - 9781849805391
Downloaded from Elgar Online at 09/12/2019 12:09:50PM
via free access
Index

confidence, protection of xxiii
conflict between different economic and political models and DCFR 18–20
academics and stakeholders 1–3
constitutional heritage in Europe and contract law 11–12, 19, 20
consumer protection 8–9, 15–16, 20
discrimination, right to freedom from 10, 16–18
function of CFR 1, 4, 13
mandatory rules and functionalisation of EC freedoms: good faith principle 13–15
principles
European contract law: lack of fundamental 6–7
European public law: common and fundamental 4–5
regulating the market between efficiency and distributive effects 7–9
social justice and CFR 9–11
soft and hard law: role of private international law 12–13
stakeholders 2–3, 11, 19–20
structure of CFR 3–4
constitutional law/heritage 5, 11–12, 19, 20, 24–5, 33–5, 93, 206
consumer law xiv, xxxii, 48, 50, 60, 65, 203–4, 206, 207
B2C contracts see separate entry
collective redress xxxvii, xxxix, xl, xli
consumer behaviour see under empirical evidence
consumer protection associations 49
content-control of consumer contracts 163
European Commission xxvii, 4, 147–8, 177, 210
framing effects 188
Hayek 136–7, 138
horizontal direct effect 64–5, 76
PECL 39
remedies 214
self-determination 8–9, 15–16, 20
technical standards xxiii–xxv
contract governance xiii
see also regulation and competition
contract law and DCFR xii–xiv, 36–8, 148
methods and approaches unclear 38–41
modern questions not approached so far 48–52
subject matter unclear 41–8
contract for services xiv, 48, 49, 51, 162–3, 165, 183, 189
contract terms, standard xxxv, 48, 49–50, 76, 177, 203
empirical evidence 112–14
nationality clauses 81
corrective justice 88
costs of lawmaking 186–8
Council xlii, 4, 201
Courage case 58
Craig, P. 60, 69
creative destruction 191, 192
credit market, personal 111
credit-financed transactions xiii
Crefeld, M. v. 151
Cruz, J.B. 56
damages xxxiii, xl, xli, 84, 214, 215
Danwitz, T. von 69, 70
Dashwood, A. 69, 70, 80
Davenport, T. 186
Davis, K.E. 186
De Martino, B. 188
Deakin, S. 19
Defrenne II case 59, 78
Della Vigna, S. 107
democracy
democratic legitimacy xxvi, 97–8, 141, 149, 154
Hayek 131–2, 141, 143, 144, 145, 146
Di Robilant, A. 13
discrimination see non-discrimination
distribution contracts xiii, 114–21, 122, 148, 162
distributive justice xxv, xxx, 9–10, 19, 88, 164
Hayek 128, 135
Donahue, C. 152
Dori case 68
Duffy, J.F. 175
Dürig, G. 157
e-commerce xx, 49, 216
Easterbrook, F. 41
Eckardt, M. 175
economics, behavioural xxix, 40, 109–10
see also empirical evidence
Ehrlich, E. 151
Eidenmüller, H. xv, xxvii, xxix, 36, 41,
44, 87, 88, 99, 147, 149, 161, 162,
163, 164, 165, 167, 178, 180, 183,
184, 185, 189
electricity services 85–6
Ellison, G. 107
Elsmore, M.J. 82
empirical evidence xxviii–xxix, 39,
101–4, 121–2, 181
anchoring effects 191
consumer behaviour 40, 104–14, 122
bounded rationality 105–6, 108
learning 108–9
model rules 110–114
standard contract terms 112–14
costs of lawmaking 187
framing effects 188
long-term distribution contracts 114–21, 122
employment law see labour law
endowment effect 105
Enneccerus, L. 168
Epstein, L. 102
Epstein, R. 108
Erdmann, G. 175
Erichson, H. xxxi
Ernst, W. 176, 178, 180, 181, 182, 183,
184, 185, 186, 189, 190
Esser, J. 152
Eucken, W. 8, 11
European Commission viii, xxvi, xlii, 5,
52, 53, 150, 184, 190
academic experts xxvii
aim of CFR 1, 6, 13, 91–2, 95–6,
141, 176, 183
CFR: optional instrument 202–3, 205, 218
company law xix
competition of ideas 55
competition law xxi, 58
consumer protection xxvii, 4, 147–8,
177, 210
European Code/Civil Code 38, 147,
202
product liability xv
public/private divide in European law
58–9, 85
European Court of Justice (ECJ) xiii,
xvi, xxii–xxiii, xxxii, xlii, 34
corporate practices law xix–xx
company law xix
DCFR and legal innovation 185, 187
EC Treaty: ‘Constitution’ xvi, 57
public/private divide in European law
57, 58–60, 88
directives: horizontal direct effect
67–75
horizontal direct effect as general
remedy 76
non-discrimination 77–8, 79–85
primary law: horizontal direct
effect 61–4
regulations: limits to horizontal
direct effect 66–7
European Law Institute (ELI) xxxvi, xlii,
55
European Parliament xlii, 3, 7, 145
Ewald, W. 180

Fabre-Magnan, M. 9, 46, 212
Fages, B. 36, 189
Falk, U. 154
Fauvarque-Cosson, B. 4
Ferrarini, G. xix
Feryn case 84
Fishman, P. 109
Foucault, M. 8
framing effects of DCFR 188–90, 191
France xiv, xxvii, 151, 154, 159, 165
B2B contract of sale 211–12, 213
good faith 29–30, 211, 212
remedies 214, 215
franchising 114–21, 122, 148, 162
Francovich doctrine 58, 59
free movement 57, 58–9, 61–5, 76,
81–3, 87
freedom of contract xi, 8, 10, 14, 15, 16,
58, 62, 86, 218
Freeman, E.R. 2
Friedberg, E. 156, 157
Friedman, M. 125, 138
functions and purposes of (D)CFR 1, 4,
13, 91–2, 94, 176–9, 181–3,
201–4
fundamental rights/freedoms 5, 12, 24–5, 33–5
see also Charter of Fundamental Rights

Gandolfi, G. 52, 178
Geis, G. 103
Genovese, A. 32, 33
Gerber, D.J. 8
Germany xxvi, xxvii, 7, 36–7, 44, 56, 85, 159, 165
age discrimination 71–2, 74, 79–80
authority of legal sources 155–8
consumer law xiv, 70–71
‘directive’ conforming interpretation of national law 74–5
suretyships 62
surnames, limited choice of 81–3
third party effects of contracts 50–51
Gerven, W. van xii, xvi, xxxii, xxxix, 56, 71
Ghestin, J. 29, 212
Gijrath, S. xviii
Glaeser, E.L. 191
Goetz, C. xiii
Goffman, E. 188
Gomez, F. 46, 102, 173, 174, 178, 180, 183, 185, 186, 192
good faith xiv, 9–10, 13–15, 43, 208
France 29–30, 211, 212
interpretation in accordance with 25–8
human rights, fundamental freedoms and constitutional laws 33–5
one party: stronger rights 29–33
Goode, R. 32, 214
Gordley, J. 154
Gormley, L. xxi
governance, contract xiii
see also regulation and competition
Grajzl, P. 187
Grant case 80
Grassetti, C. 25, 26
Grimm, D. 152
Gross, D. 107
Grossfeld, B. 50
Grossi, P. 153
Grundmann, S. xii, xx, xxi, xxxviii, 36, 42, 50, 124, 136–7, 173, 179, 180, 183, 188, 189, 191, 209–10
Grunkin-Paul case 81–3
Guibault, L. xxi
Haberl, S. 18
Habermas, J. 93, 137
Hadfield, G.K. 174
Haferkamp, H.-P. 154, 156, 157
Hage, J. 186
Hähnchen, S. 155
Harding, A. 151
harmonisation 2, 179, 180, 192, 214, 215, 218
legislative xxxvi
non-legislative xlii
Hart, H.L.A. 134, 151
Hart, O. 41
Hayek, F.A. von 54, 178
Hayek’s libertarianism 123–5, 146
contract law 133–8
Europeisation 139–40
private law: spontaneous order or democratic design 141–5, 146
theory of law 125–32
Heath, C. 105
Heiderhoff, B. xiv
Heine, K. 178, 191
Heiss, H. ix
Hesselink, M.W. ix, 4, 28, 36, 40, 124, 140, 141, 145, 173, 174, 176, 177, 183, 185, 189, 192, 215
Hillman, R. 112, 114
Hilty, R. xx, xxi
hindsight heuristic 105
Hippel, E. v. 175
Hirsch, G. 185
Hodges, C. xxxvii
Hondius, E. 154, 162, 179
Hopt, K.J. xviii
human rights 12, 24–5, 33–5, 206
hyperbolic discounting 105, 107, 110
Iavolenus 7
information
anchoring effects: incomplete and complex 191
asymmetric xxxviii
costs of lawmaking 186–7
economics xxix
market mechanism: spreading of 126
role in contract formation xiv, xx, 10, 14–15, 16, 48–9, 51
innjunctions xxxvii, xxxviii, xxxix, xl, xli, 84

innovation in contract law

(D)CFR as instrument of legal 176 elements 179–81
functions 176–9
purposes 181–3

(D)CFR’s impact on legal 183–4
actors 184–6
costs of lawmaking 186–8
framing innovation process 188–90, 191
process innovation 186
virtual defaults, setting 190–191
dynamics of change and legal 173–5
multi-layered systems of contract laws 191–2

insurance xv, xviii, 83, 206
intellectual property rights xx–xxi, xxv, 60
free movement 64
internal market xxxiv, 12, 95, 192, 204 see also free movement internet xxi

investor protection law xviii–xix
Irti, N. 19
Italy xiv, 2, 17, 19, 36–7, 41, 155
good faith 25–7, 32–3, 35

Jansen, N. ix, 92, 94, 99, 145, 147, 148, 151, 153, 154, 155, 161, 162, 163, 165, 166, 177, 180, 183
Jellinek, G. 151
Joerges, C. xiii, 57, 68, 93
Johnson-Cartee, K.S. 188
Johnston, J.S. 190
Jolls, C. 104, 111
judges xxix, xlii, 33–5, 160, 185, 213
coregulation xxxv
DCFR: questions of law left to judges 161, 164, 165
Germany: constitutionalisation of private law 157–8
Hayek 142–4
justice xi, xxx, 87–9
commutative xxx, 9, 19, 87–8
distributive xxx, 9–10, 19, 88, 128, 135, 164
social see separate entry

Kahneman, D. 188
Kannowski, B. 155, 156
Kant, I. 128, 134
Karsten 66
Kelly, D.R. 154
Kelsen, Hans 131, 134, 143, 151
Kennedy, D. xi, xvii, xxviii, xxx, 215
Kerameus, K.D. 179
Kerber, W. 124, 175, 178, 184, 192
Keßler xvii, xviii
Kiefer, T. 156
Kirchner, C. 186
Klein, B. 107, 114
Klein, N. 138
Klick, J. 115, 117–18
Kohler, D. xxix
Korobkin, R. 103, 190
Koschaker, P. 154
Kraus, T. 187
Kreutzer, T. xxi
Küküdecici case 74
Kuneva, M. 4
Kymlicka, W. 137–8

labour law xxviii, 3, 60, 62, 69, 76, 88, 148
age discrimination 71–3, 74, 79–81
employment contracts 207
framing effects 189
trade unions 63–4, 76
Lafontaine, F. 115, 118
Lampe, E.J. 175
Lando, O. ix, xxx, 2, 4, 5, 12, 14, 15, 17, 39, 146, 149, 177, 178, 179, 180, 184, 189, 208
Langebacher, K. 36, 189
LaVal case 63–4, 76
Lawson, F.H. 165
lawyers xlii, 2
see also academic lawyers
leasing 148, 162
legal innovation see innovation in contract law
legal positivism 130–131, 134, 143, 144, 146, 151
legitimacy xxx–xxxi, 149, 182
democratic xxvi, 97–8, 141, 149, 154
Legrand, P. xxviii, xxxi, 190
Leible, S. x, 88
Lequette, Y. xxvii
Index 227

Lewison, K. 31
libertarianism see Hayek’s libertarianism
Lisbon agenda 173
loans 148
loss aversion 105
Luhmann, N. 155
Luig, K. 152, 155
Lurger, B. xiv, 13, 127, 180, 182, 209, 210, 219

Macaulay, S. xii, 134
McGuire, M.-R. xxv
Macho-Stdler, I. 187
Maduro, M. 127
Maffei, D. 18
Magne case 66
Maier, N. 188
Mak, C. 12
Manfredi case 58
Mangold case 59, 71–2, 79–81
Mangoldt, H. v. 157
Mansel, H.-P. 179
Marella, M.R. 9
market mechanism: Hayek 126, 129, 134–5
Marotta-Wurgler, F. 112, 113
Martinek, M. 49
Martins, H. 92
Martiny, D. 178
Maruko case 59, 73, 74
Marx, K. 138
Massoud, N. 107
Mathewson, G. 114
Mattei, U. 180
Mayer, K. 8
Mazeaud, D. 8
Meder, S. 152
Meier, S. 107
Mekki, M. 36, 179
Meli, M. 18
Melin, P. 174
Meller-Hannich, C. xiv
Mertens, B. 154
Mestmäcker, E.-J. xxi, xxii, 134
Mestre, V.L. 29
methodological nationalism 90, 92–4
choice of relevant rules 96–7
comprehensive codification or multi-layered EPL 94–6
DCFR: background and purpose 90–92
law beyond the national state 97–9
way forward 99–100
Michaels, R. ix, 68, 93, 149, 151, 159
Micklitz, H.-W. viii, xiii, xiv, xvi, xvii, xviii, xx, xxxii, xxxii, xxv, xxvi, xxvii, xxix, xxx, xxxvii, xxxix, 16, 58, 65, 86–7, 98, 163, 164, 179, 189, 205, 210
Miller, G. xxxviii
Miravete, E. 107, 109
models see conflict between different economic and political models and DCFR
Mohnhaupt, H. 152, 153
Möllers, C. 151
Monateri, P.G. 9
Morgan, B. 97, 98
Möslein, F. 180
moveable property 148
Müller-Armack, A. 9
Müller-Graff, P.-C. 61
multi-level character of EU xxix–xxxii, 95
legal innovation in contract law 191–2
mutual recognition 13, 57

Nagareda, R. xxxi
nation states 151–2
national legal orders xxix–xxx,
xxxii–xxxiii, xxxvi, xxxix–xl,
xlvi, 160, 166
nationalism 139, 140, 146
nationality clauses in standard form contracts 81
see also methodological nationalism
Navas case 81
negligence xxxv
Netherlands 139, 150
network contracts/law xiii, xvii–xviii,
41, 46–7, 48, 51, 85–7
third party effects 50–51
Nipperdey, H.C. 157, 158
non-discrimination x–xi, xxv, 206
conflict between different economic and political models and
DCFR 10, 16–18
public/private divide in European law 57, 58–9, 60, 61, 87–8
age discrimination 71–3, 74,
79–81

Hans-W. Micklitz and Fabrizio Cafaggi - 9781849805391
Downloaded from Elgar Online at 09/12/2019 12:09:50PM via free access
general principle of non-
discrimination 77–8
pension scheme: discriminatory
exclusion 73
private law relations 78–85
surnames, limited choice of 81–3
user access and quality: services
85–8
Nordmann, M.J. xxii
Nottage, L. 188
Nourse, V. xxviii

obligations, general law of xii, 42–3, 46–7
occupational pension scheme 73

Océano case 70, 73
O’Connor, J.F. 31
Oderkerk, M. 6, 182, 187
Oestmann, P. 153
Okruch, S. 175
open method of coordination 205
optional instrument, (D)CFR as basis for
xxx, 177–8
optional instrument, party choice and
mandatory/default rules
design and social function of default
rules of CFR 211
‘blue button’: lowering social
protection 216–19
distinguishing default and
dispositive rules 211–13
when are mandatory rules needed
213–16
introduction
method, policy and design 204–5
tool-box, code or source of
inspiration 201–4
party choice and CFR
conflicts of mandatory rules
208–10
fitting into space left for
dispositive rules 206–7
tool-box 205–6
ordoliberalism 6, 8, 9, 10–11, 12–13, 14,
15, 16, 17, 19, 20
Hayek 127–8
Orsi Battaglini, A. 35

pacta sunt servanda xxiii
Pahlmann, B. 155
Pakaluk, M. 87

Palacios de la Villa case 72–3, 80
Palmer, V. 51
Panza, G. 19
Papier, H.-J. 158
Parisi, F. 187, 188, 192
parol evidence rule 30
path dependency 191
Paz-Ares, C. 116
pension scheme: discriminatory
exclusion 73
personal injuries xxxix
Pfeiffer case 68
Pistor, K. 174, 184, 188, 191
Polanyi, K. 19
Popper, Karl 126
positivism, legal 130–131, 134, 143,
144, 146, 151
Powell, R. 31
precautionary principle 34
Prechal, S. 69
Priest, G.L. 175

Principles of European Contract Law
(PECL) ix, 2, 3, 4, 6, 11, 12, 14,
15, 16, 17, 39, 92, 149–50, 159,
161, 162, 202, 203
product and food safety xxiii
product liability xv, xxxv, xxxix
professional services xxxv
property law xxxiv, 3, 41, 189, 206
public goods 139
public procurement law xxii–xxiii, xxv
public/private divide in European law
56–61
competition rules 58, 61, 62, 64–5,
76
regulations 66–7
concept of justice 87–9
conflict of law-method 57
horizontal direct effect of EU law
59–60
‘directive’ conforming
interpretation of national
law 74–5
directives 60, 67–75
general remedy 76
primary law 61–5
regulations: limits of 65–7
non-discrimination and private law
87
Index

229

general principle 77–8
private law relations 78–85
purposes and functions of (D)CFR 1, 4, 13, 91–2, 94, 176–9, 181–3, 201–4
Putzolu, A. 17

Quelle case 70–71, 74

Rabel, E. 50
Rachlinski, J. 106, 191
rail passenger rights 65
Raiser, L. xvi
rationality, bounded 105–6, 108
reference text see authority of DCFR
regulation and competition xi, 51
co-regulation xxxi, xxxiv, xxxv
collective redress xxxviii
from codification to xi, xvi–xvii, xi, xxv
commercial practices and contract law xix–xxi
competition law, state aids and public procurement xxi–xxiii
consumer law and services xxiii–xxv
product safety and food safety law xxiii
regulated markets xvii–xix
private law-making xxxiii–xxxvi
regulated markets xvii–xix, xxv, xxvi, xli–xlii, 189
services: user access and quality 85–7
self-regulation xxxiv, xxxv, 13
Reich, N. xi, xxviii, xxxiii, xxxix, 58, 62, 65, 67, 70, 74, 76, 80, 81, 83, 85, 88, 201, 205, 206, 209
Reimann, M. ix, xv
Reinhard, W. 151, 152
relational contracts xii–xiii, 51
remedies xxxii, xxxiii, 50, 58, 76, 83–4, 88
DCFR: inclusion of all obligations 44–5, 47
DCFR: optional instrument, party choice and mandatory/default rules 213–15, 217–18

DCFR and collective redress xi, xxxvi–xli, xi
restitution xli, 45, 47, 95
representative heuristic 105
research areas xli
restitution xli, 45, 47, 95
Riesenhuber, K. xiii, 180, 185
Riley, C.A. 213, 215–16
Rizzi, A. 33
Rizzolo, V. 26
Roberts, S.A. 97
Rocco, A. 20
Rödl, F. 154
Roe, M.J. 191
Röhl, K.F. 152
Romagnoli, U. 20
Român law 153, 155, 156
Romano, R. 175, 187, 191, 192
Rome Convention 17, 178
Rome I Regulation xxxi–xxxii, 17, 178, 203–5, 206–7, 208, 209, 210, 216
Ross, M. 85
Rott, P. xi, xviii, 62, 85, 86, 214, 218
Rubin, P.H. 175
Ruffert, M. 158
Rutgers, J.W. 13, 173, 177, 182, 210
SABAM case 58
Sacco, R. 25, 26–7
Säcker, F.J. x
Sah, R.K. 192
Sauter, W. xviii
Scandinavian countries xxx
Schäfer, H.-B. 164
Scharpf, F.W. xxvi
Schick, D. x, xxxi, 18, 83, 95
Schmidt, H. 188
Schmidt-Kessel, M. 161
Schmidt-Räntsch, J. 176, 177
Schmoeckel, M. 154
Schreier, M. 83
Schreier, J. 166
Schulte-Nölke, H. xii, xxx, 149, 150, 177, 178, 180, 181, 182, 186, 189, 213, 216, 218
Schulze, R. viii, ix, x, xix, 3, 4, 7, 11, 88, 148, 149, 162, 179, 202
Schwertz, A. 111
Schwertze, A. 179, 184
Sciarra, S. 20
Scognamiglio, C. 26, 33
Scognamiglio, R. 4
Sefton-Green, R. 2, 36, 42, 182
self-regulation xxxiv, xxxv, 13
Sen, A. 137
Senden, L. 13, 201
service contracts xiv, 48, 49, 51, 162–3, 165, 183, 189
Sharkey, C. xxxi
Sharkey, W. 38
Shui, H. 107
Siems, M.M. 175, 180
Sirena, P. 36, 45, 189
Sirigiovanni, B. 32
Skandinvask case 67
Skouris, V. 187
Smith, Adam 10, 126
Smits, J. M. 36, 94, 95, 98, 99, 124, 136, 141, 177, 178, 180, 182, 183, 184, 185, 186, 191, 192
Snow, D.A. 188
social dumping 210
social justice xi, xxx, 6, 8, 9–11, 19, 36, 40
Hayek 134, 135, 137
mirage of social justice 128–9
welfare economics 129–30
legal innovation in contract law 174
reducing party choice 218–19
social market economy 9, 127
socialism
Hayek 127, 129, 132, 136, 137, 139
legal positivism as a socialist ideology 130–131
soft law xxxi, 13, 160, 179
Solred case 72
Soman, D. 108
Soma, A. 2, 7, 9, 12, 13, 15, 127
Spain 150, 151
Spindler, G. xxiii, xxxv
Stapleton, J. xxxix, xl
state aid law xxi–xxii, xxv
Staudenmayer, D. 179, 182
Stein, P. 175
Steindorff, E. xvi, 59–60, 64, 84, 180
Stella Richter, G. 32
Stern, K. 158
Storme, M.E. 15
strict liability xxxv
Stürner, R. 174
subsidiarity principle 65
Sunstein, C. 104, 191
surnames, limited choice of 81–3
Swann, S. 95
Sweden 138
Tamanaha, B.Z. 142
Taupitz, J. 180
01051 Telecom case 74–5
tenants 189
Teubner, G. xiii, 31, 143, 145, 155, 175, 190
Thatcher, Margaret 125
Thibaut, A.F.J. 155
third party effects of contracts 50–51
Tidd, J. 175
Toriello, F. 5
tort xiv–xv, xl, 39, 41, 42–7, 206
co-regulation xxxv
collective redress xxxvii, xxxix
framing effects 188, 189
Hayek 127
organisational or enterprise liability xiv–xv
personal liability xi, xiv–xv
public/private divide in European law 60, 65, 67, 68, 88
trade unions 20, 63–4, 76
transport services 65–6
Tridimas, T. xxxix, 77
Trubek, D.M. xxviii, 13, 205
Tversky, A. 191
Twigg-Flesner, C. 89
Twining, W. 98
Ulen, T.S. 175
Ulpian 56
unfair commercial practices xx, xxxii, xxxiv, xxxv, xxxvii
unfair contract terms xxiii–xxv, xxxii, xxxiii, xxxvii, xxxviii, xxxix, 15, 39
unfair prices and Hayek 135–6
Unger, R.M. 152
Unilever case 69–70
United Kingdom 30–32, 51, 211, 212, 214–15
United States xxxi, xli, 10–11, 138
unjust enrichment 3, 41, 42, 43–4, 45, 96, 148
utilitarianism 129–30, 134–5, 136

Hans-W. Micklitz and Fabrizio Cafaggi - 9781849805391
Downloaded from Elgar Online at 09/12/2019 12:09:50PM
via free access
Index

Van Alstine, M.P. 174, 186
Van Caeneghem, R.C. 141
Van den Bergh, P.A.J. 95
Van den Bergh, R. ix, 140, 178
Van de Ven, A.H. 175, 188
Van Erp, S. 189
Van Waarden, F. xxxv
Vandenberghhe, A.-S. 18
Varga, C. 152
Varney, E. 65
Vettori, G. 10, 33, 34
Viglione, F. 28, 31
Viking case 59, 63–4, 76
Voganauer, S. 214
Voigt, D. xiii
Von Bar, C. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11–12, 36, 39, 90, 123, 148, 149, 150, 162, 163, 164, 174, 177, 178, 181, 182, 185, 186, 188, 189, 190, 201

Waddington, L. 73
Wagner, G. ix, 9
Walgrave case 61–2
Wallis, Diana 123
Wangenheim, G. v. 175, 192

Watson, A. 180, 190
Weatherill, S. xx, xxix
Weiler, J.H.H. 57
welfare economics 129–30
welfare state 9, 20, 137–8
Wendehorst, C. 158, 159, 163, 189
Whittaker, S. 28, 36
Wieacker, F. 152, 155
Wilhelmsson, T. xviii, xxx, 9, 99, 182, 204
Willett, C. xi, 86
Williams, D. 115, 117
Wimmer, A. 92
World Bank xxviii
Wouters case 62
Wright, J. 106
Wurmnest, W. 148

Ziller, J. 173
Zimmermann, R. 43, 145, 149, 150, 153, 154, 156, 157, 180, 211
Zoll, F. xxxii
Zumbansen, P. xxxi, 95
Zweigert, K. 154, 180
Zywicki, T.J. 107, 142