



# IUS COMMUNE CASEBOOKS for the Common Law of Europe

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1. This text provides an overview of the *Ius Commune Casebook Project*, currently hosted by the Leuven Centre for a Common Law of Europe (Leuven CCLE) of the Katholieke Universiteit Leuven (Belgium) and the Maastricht European Institute for Transnational Legal Research (METRO) of the Universiteit Maastricht (Netherlands). The aims of this project will be set out, as well as the essential features of the methodology applied.

We then focus on contract law, discussing the achievements of the Casebook Project in that area as well as the objectives to be pursued in the future and the possible contribution of the project to the common frame of reference ("CFR"). We finally turn to possible cooperation with other initiatives on European contract law, e.g. in the context of the Sixth Framework Programme ("FP6") launched by the European Commission.

## A. Aims and methodology

2. *General.* The emphasis of the Casebook Project lies on uncovering the emerging *ius commune Europaeum*, i.e. investigating the European legal systems (from European states as well as the EU and the ECHR) as they currently exist to set out what they have in common (or, as the case may be, explore and account for their differences). For that purpose, a "bottom-up" approach is applied, starting from a study of court decisions and other sources of law (statutes, legal writings). The major part of the base material consists of cases dealing with functionally comparable fact-patterns arising out of 'daily life' situations. It is drawn from the major national legal systems, and from the supranational and international level, with an emphasis on EU and ECHR law. The number of legal systems dealt with varies depending on the subjects, but the legal systems representative of the main law families (Germany, England, France) are always included.

This approach does not aim at the development of a model code or draft code to be offered to lawmakers, nor does it pursue the restatement of a closed set of principles. It rather intends to nurture a *ius commune substratum* reflecting both European and national laws, upon which top-down initiatives can be built, if and where appropriate.

3. *Developing teaching materials.* An essential part of the Casebook Project is the development of teaching materials which can be used in law curricula throughout Europe in order to make law students and teachers familiar with the idea of a *ius commune*. The aim is to produce a collection of casebooks covering each of the main fields of law. Excerpts from the chosen materials are bundled in casebooks, together with the results of the search for common solutions, concepts and principles. Introductory and explanatory notes accompany the excerpts to situate them in context.

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At the end of each section, comparative overviews tie together the materials. Since the vast amount of material to be treated does not allow for discussion of every single topic, additional materials have also been published on the internet.<sup>1</sup> The website also contains the original language versions of translated cases, so that users of the casebooks can consult excerpts in their original versions.

## **B. Development**

4. The Casebook Project was launched in 1994 by Prof. Dr. W. van Gerven, who still acts as general editor of the series. In 1998, a preliminary volume dealing with the scope of protection offered by tort law was published.<sup>2</sup> In 2000, the complete casebook on tort law was issued.<sup>3</sup> A casebook on contract law appeared in March 2002.<sup>4</sup> A volume on the law of unjustified enrichment (restitution) was published recently.<sup>5</sup> A fourth task force started work on a casebook on judicial review of administrative action which will be the next to be published.

5. The aforementioned casebooks are all part of the so-called first stage of the project. At the end of 2001, a second stage was launched, with the setup of task forces, each in charge of working on a new casebook. Hitherto, eleven new task forces have been brought together. They are working on new books on civil procedure, company law, competition law, consumer law, labour law, law and art, legal reasoning, nationality and immigration law, medical law, property law and public international law from a European perspective. It is expected that the first casebooks of the second stage will be published within three years. In the near future, work is also planned with regard to contract law (resulting in a second revised version of the casebook on contract law) and in the fields of environmental law, financial services, insolvency law and insurance law.

## **C. Organisation**

6. For each casebook, the task force is composed of academics representing the main European legal families, preferably in a mixture of younger (usually post-doctoral) and more senior academics.<sup>6</sup> So far the centre of gravity of the project has been in the Benelux countries and in the UK, but membership of the task forces is open to all interested academics. A Steering Committee oversees the activities of the Casebook Project, with a view to ensuring its scientific value and establishing its reputation. A Management Committee assesses proposals for new casebooks, monitors and supports the activities of the task forces and guarantees the overall consistency of the casebook

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<sup>1</sup> Available at [www.law.kuleuven.ac.be/casebook](http://www.law.kuleuven.ac.be/casebook) and [www.rechten.unimaas.nl/casebook](http://www.rechten.unimaas.nl/casebook).

<sup>2</sup> W. van Gerven / J. Lever / P. Larouche / C. von Bar / G. Viney, *Cases, Materials and Text on National, Supranational and International Tort Law – Scope of Protection* (Oxford, Hart Publishing, 1998) lv + 494 p.

<sup>3</sup> W. van Gerven / J. Lever / P. Larouche, *Cases, Materials and Text on National, Supranational and International Tort Law* (Oxford, Hart Publishing, 2000) xcix + 969 p.

<sup>4</sup> H. Beale / H. Kötz / A. Hartkamp / D. Tallon, *Cases, Materials and Text on Contract Law* (Oxford, Hart Publishing, 2002) xciv + 993 p.

<sup>5</sup> J. Beatson / E. Schrage, *Cases, Materials and Text on Unjustified Enrichment* (Oxford, Hart Publishing, 2003) xlvi + 640 p.

<sup>6</sup> For detailed information on the network of the Casebook Project, including the composition of the diverse task forces (updated April 2003) and the contact details of the Project Research Coordinator, see the abovementioned website (footnote 1).

series. The members of the Management Committee represent the law faculties which host the Ius Commune Casebook Project: the Faculty of Law of the Katholieke Universiteit Leuven (Belgium) / Leuven CCLE<sup>7</sup> and the Faculty of Law of the Universiteit Maastricht (Netherlands) / METRO.<sup>8</sup>

#### **D. Genuine approach**

7. The approach of the Casebook Project is original. It complements more “top-down” initiatives with a case-based and open-ended bottom-up approach, which is not meant to result in a specific output format. Moreover, it does not proceed along what could be called a traditional comparative law approach. The applied formula combines elements of the approach focussing on the analysis of national laws on the one hand, and of the approach now referred to as *acquis communautaire* on the other hand. It could really fill the gap between both approaches since one of its key concerns is to focus on the permanent interaction or cross-fertilization between both layers. At the same time, the Project’s broad scope guarantees that sufficient attention is devoted to interactions between different branches of the law.

It should also be mentioned that the preferred division of work in the task forces is for each writer to be responsible for one or a few topics under the different legal systems under study, rather than for all the topics under his or her national law only. This division of work is quite demanding - fortunately, task force members can call upon the assistance of, and are supervised by, “native” lawyers - but this method guarantees that a true comparative effort is made from the beginning and does not only follow at the end (after the “national reports” have been drawn up).

#### **E. Achievements and aspirations in the field of contract law. Contribution to the Common Frame of Reference**

8. *Enhancing measure.* The Ius Commune Casebook Project could prove a useful complement to the existing (top-down) initiatives flourishing throughout Europe. It might especially be valuable as an “enhancing measure”, paving the way for a true common understanding and interpretation of the common frame of reference throughout Europe. Whatever form it may take, the CFR cannot and may not be conceived independently of the policy choices and the internal logic of the national legal systems. Putting the CFR in context - also in a historic context - probably offers the best guarantees for its prosperous future. We believe that the casebooks or other works of similar import may allow teachers, students, practitioners, judges, etc. to discuss and interpret the CFR against a common background of leading cases and materials, which should result in an improved mutual understanding, less hindered by associative fall-backs on national legal systems.

In other words, the Casebook Project provides the fertile soil upon which the other projects may grow and prosper.

9. *Available material.* At present the series already covers the law of obligations. The casebooks on tort law and unjustified enrichment accompany the contract law

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<sup>7</sup> Further information: [www.law.kuleuven.ac.be/ccle](http://www.law.kuleuven.ac.be/ccle). One of the aims of Leuven CCLE consists in pooling the faculty's research efforts related to the Casebook Project.

<sup>8</sup> Further information: [www.rechten.unimaas.nl/metro](http://www.rechten.unimaas.nl/metro).

casebook. All of them pay close attention to the multiple interactions and mutual influences between those related branches of civil law.

These casebooks are increasingly used for teaching purposes. Thus, when the CFR will take its final shape, new law students will have already been introduced, for several years, to “European private law”. Moreover, the casebooks are suited for the type of legal education that might be expected to spread throughout Europe in the wake of the Bachelor/Master reforms which, as the mobility of students will expand, will generate a correlative increase in demand for English-language teaching materials written from a true European perspective.

10. *Prospects.* The second stage of the casebook project will result in a number of new casebooks which directly concern the field of contract law. That is of course the case for the second edition of the casebook on contract law and the new book on consumer law, but that holds also for the casebooks on property law (which will pay attention to borderline issues with the other branches of civil law), labour law (a large part of which will be devoted to labour contracts) and company law.

Although less obvious at first sight, other casebooks will deal with contract law as well. The members of the task force in charge of the book on competition law seek to reveal the impact of this sector of economic law on contract law and on consumer law. Here, the wider range of activities within the Casebook Project may make for a marked added value over other existing initiatives. Indeed, the project is not limited to what is traditionally branded as contract law nor even to private law. This makes it possible to also study, for instance, the impact on contract law of block exemptions under competition law, or of the new regulation on a European company.

Furthermore, it should be mentioned that the second wave of the Casebook Project also includes a volume on legal reasoning. It has repeatedly and rightly been emphasised that more attention should be paid to the philosophical foundations underlying contract law in Europe. The casebook on legal reasoning aims to enrich that debate.

## **F. Cooperation with other initiatives, also within the context of FP6**

11. *What contributions from other groups would be most useful for the Casebook Project ?* First of all, the Casebook Project would be happy to cooperate more closely with other groups in order to extend its informal network so as to be able to obtain assistance concerning jurisdictions which might not be adequately covered within a given task force. As pointed out, the casebooks focus on the legal systems representing the leading families (i.e. English, German and French law) and include original solutions from other legal systems (if needed in additional materials to be made available via the website). Secondly, the Casebook Project would like to make use of the informal contacts in a network under FP6 to organise the kind of meetings that could pioneer a future European law curriculum commission, in order to share experiences on teaching European private law and to make recommendations as to the further improvement of the serviceability of the casebook series in that respect.

12. *What contributions could the Casebook project make to other groups and to the Commission ?*

- As appears from the foregoing, we are convinced that it would be useful if the CFR, in whatever form it may take (e.g. a multi-layered system of definitions, principles

and accompanying commentaries), were to rest upon a layer of research and teaching work that would enable it to produce its full effects. In that regard, it should be pointed out that the Casebook project is willing to pool its database of original-language versions of the non-English excerpts, and its expertise in setting up such a database. This initiative would be comparable to the SECOLA initiative to assemble a database with legislation, and could fit in a “network of networks” with cases to which other projects refer. Making available the vast amount of documentation that has been collected by each of the active groups will certainly boost the interest in and facilitate the study of comparative law.<sup>9</sup>

- The Casebook Project would also be happy to share and discuss its experience in the search for a legal *lingua franca* and concerning the translatability of legal terminology.
- With regard to FP6, the Casebook Project and the hosting institutes are ready to join a “network of networks” and to cooperate with any partner group, whatever its approach, provided that the specific bottom-up approach is recognised as an integral part of the common project. As suggested by other groups, it seems more desirable to cooperate than to integrate. Several of the academics involved in the Casebook Project are also involved in other initiatives. The Leuven CCLE has hosted the SECOLA Conference on the 2001 Commission Communication on European contract law,<sup>10</sup> the Leuven Faculty of Law honoured Prof. von Bar with a doctoral degree *honoris causa*, and in the future the Faculty will host meetings of the Study Group on a European Civil Code and a closed meeting of the Project Group 'Restatement of European Insurance Contract Law'. The faculties of law of Maastricht, Leuven and Utrecht (complemented with scholars of the universities of Amsterdam and Liège) also already coordinate their research efforts and closely collaborate within the so-called Ius Commune Research School.<sup>11</sup> Our actions thus make clear that we do not think in conflictual terms, but rather see the Casebook Project as a useful complement to existing initiatives.
- The hosting institutions of the casebook project (Leuven CCLE and METRO), together with the Tilburg Law and Economics Center (TILEC)<sup>12</sup>, with which they have close links, have a sound reputation in the area of law and economics. The staff members involved would be happy to cooperate with any other initiative (within another group or between different groups) which would be set up in this respect.
- Finally, we believe that intensifying cooperation with, and involving partners from, the new EU Member States from Central Europe is of utmost importance, and we hope to find partners to join forces in this regard.

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<sup>9</sup> A system allowing accessing such a database on the basis of the internal logics of each project could be developed. E.g. one case can be displayed as 'excerpt x' in 'casebook y', but also as an illustration of 'provision z' of the CFR or of 'principle q' of the EPCL. The structure should be such that it easily allows adding additional indexes to consult the database.

<sup>10</sup> See S. Grundmann and J. Stuyck, *An academic Green Paper on European Contract Law* (The Hague/London/New York, Kluwer Law International, 2002), published in: Private Law in European Context Series.

<sup>11</sup> Further information: [www.rechten.unimaas.nl/ozic](http://www.rechten.unimaas.nl/ozic).

<sup>12</sup> Further information: [www.uvt.nl/tilec](http://www.uvt.nl/tilec).