

EUROPEAN CONTRACT LAW AND JUSTICE

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Course outline

Objective

The aim of the course is to explore the relationship between the Europeanisation of contract law and justice. To this end, we will address fundamental political questions of European contract law from the perspectives of leading contemporary political theories.

The course is organised as follows:

1. Introduction

Seminar 1 provides an introduction. We will briefly discuss the states of play in the two debates this course aims to bring together, ie European contract law and political philosophy. We will start with a brief general discussion of EU contract law. The main objective is to set the scene by presenting some of the main milestones, players, acts and controversies. This will provide the students with a general but concrete sense of what we are talking about when we speak of 'European contract law'. Subsequently, there will be a similarly brief introduction into normative political philosophy, with a special focus on aspects relevant for (European) contract law. In particular, we will highlight the main traits of some of the leading contemporary political theories, ie utilitarianism, liberal-egalitarianism, libertarianism, communitarianism, civic republicanism and discourse theory.

2. Democratic basis

Seminar 2 addresses the relationship between contract law and democracy. The central question will be whether contract law in order to be legitimate must have a democratic basis and what this would entail. This leads, in the first place, to a normative institutional comparison between legislators, courts, legal academics and economic-sectoral experts as the protagonist in contract law making. In addition, the question of democratic legitimacy may lead beyond the matter of institutional choice, to the limits on the kind of reasons that can justify, in our case, European contract law.

3. National, European or global?

Seminar 3 addresses the Europeanisation of contract law, already introduced briefly in the first seminar, this time from a normative perspective: can the Europeanisation of contract law be justified? Or, in contrast, does justice require that contract law remain national, or, indeed become global?

4. Weaker party protection

Seminar 4 discusses the question of whether contract law should differentiate between different types of contracting parties in function of their relative or absolute relational or social weakness. In other words, should contract law protect certain weaker parties? And if so, who should count as worthy of protection and what kinds of protection should they be granted? Given that consumer protection has been central to EU contract law, this question goes to the core of the justifiability of the contract law acquis.

5. Public policy and good morals

Seminar 5 asks the question of whether a society committed in principle to the legal enforcement of contracts is free nevertheless, or even required, to withhold enforceability from certain contracts, by declaring them 'null' or 'void' under doctrines such as contracts contrary to 'good morals' or 'public policy', because of their unacceptable content, purpose or consequences. This is the classical question of freedom of contract, which can be rephrased in contemporary terms for the EU as the question of the moral limits to the internal market.

Format

The course will not consist of formal lectures but of highly interactive discussions. The only reading materials for this course will be an as yet unpublished manuscript written by the lecturer, which hopefully will provide a starting point for an engaged and informed normative discussion on some of the key questions concerning contract law and justice in the European Union.