

II. EFFECT OF FUNDAMENTAL RIGHTS: (2) HORIZONTAL

- Fundamental rights used (mostly by courts) to determine the entitlements and obligations of private parties against each other

Direct horizontal effect:

- Remedy (e.g. damages, injunction) directly descends from fundamental rights
- Private party directly bound by fundam. right

Indirect horizontal effect:

- Fund. right → interpretation of private law
- Private party not directly bound by fund. right

Horizontal Effect Fundamental Rights Law

Eleni Frantziou



Horizontal Effect Fundamental Rights Law:

The Status of International Treaties on Human Rights European Commission for Democracy through Law, Universidade de Coimbra. Faculty of Law, International Association of Constitutional Law, 2006-01-01 This publication contains a number of papers presented at an international seminar held in Coimbra Portugal in October 2005 organised by the European Commission for Democracy through Law Venice Commission in co operation with the lus Gentium Coimbrigae Centre and the Faculty of Law of the University of Coimbra and the International Association of Constitutional Law IACL Issues considered include human rights and state succession territorial scope of human rights obligations the position of human rights treaties in national legal systems the obligation to comply with the judgments of the European Court of Human Rights the criteria for establishing the hierarchy of legal rules in national and international law

The Horizontal Effect of Fundamental Rights in the European Union Eleni Frantziou, 2019-01-31 This book analyses the horizontal effect of fundamental rights in the European Union from a constitutional perspective It advances two main arguments First it argues that the horizontal effect of fundamental rights i e their application to disputes between private parties cannot be usefully discussed based on the existing EU horizontality doctrine which associates horizontality with the exercise of horizontal direct effect only That doctrine is characterised by a series of overly technical rules as to how the latter may be produced and has a case specific nature that lacks overall constitutional coherence Secondly the book argues that a substantive theory of horizontality is required in EU law and sketches its main parameters In the fundamental rights context horizontal effect has organisational implications for society which go beyond specific intersubjective disputes It is argued that its determination requires an explicit recognition of the public character of certain private platforms of will formation e g the workplace and a discussion of the role of fundamental rights therein At the same time a constitutionally adequate model of horizontality involves an acknowledgment of the supranational character of EU adjudication the determination of horizontal applicability of a fundamental right within a type of private authority relationship falls upon the Court of Justice but the precise manifestation of horizontal effect e g direct indirect or state mediated effect rests with national courts

Constitutionalization of European Private Law Hans Micklitz, 2014-04-17 In recent years the impact of human rights and fundamental rights on private law has risen in prominence and led to a whole series of detailed investigations Constitutionalization of private law is the flag under which most of the research on the increasing impact of national constitutional rights on national private legal orders is sailing In the absence of a European Constitution the constitutionalization of European private law suggests a process constitutionalization instead of constituent power demos and the magic constitutional moment The Charter of Fundamental Rights and the European Convention of Human Rights constitute the two pillars on which the transformation of European private law rests This volume clearly demonstrates the change that has taken place at the national and at the European level Private law is no longer immune to the intrusion of fundamental and human rights Whilst member states and

the EU are driving the process by adopting ever more concrete and more comprehensive lists of human and fundamental rights at the national the European and international level with overlapping contents the true and key players in this development are the national and European courts Contributions to this volume give this process a face and a direction which is highlighted in the introduction by Hans W Micklitz Research Handbook on EU Consumer and Contract Law Christian Twigg-Flesner,2016-09-30 The Research Handbook on EU Consumer and Contract Law takes stock of the evolution of this fascinating area of private law to date and identifies key themes for the future development of the law and research agendas This major Handbook brings together contributions by leading academics from across the EU on the latest developments and controversies in these important areas of law The Handbook is divided into three distinct and thematic parts firstly authors examine a range of cross cutting issues relevant to both consumer and contract law The second part discusses specific topics on EU consumer law including the consumer image within EU law information duties and unfair contract terms The final part focuses on a number of important subjects which remain current in the development of EU contract law and presents a number of innovative solutions to the challenges presented in parts one and two This timely and insightful Handbook will provide both a comprehensive survey of this area of law for the novice researcher and fresh food for thought for scholars who have been researching this area of law for many years Contributors include E A Amayuelas H Beale J M Bech Serrat C Busch R Canavan P Cartwright O O Cherednychenko G Comparato G Cordero Moss A Cygan L Gillies M Graziadei M W Hesselink G Howells C Mak V Mak H W Micklitz B Pozzo P Rott J Rutgers J M Smits Y Svetiev E T T Tai C Twigg Flesner W H van Boom J Watson F Zoll *Building Bridges in European and Human Rights Law* Michael-James Clifton,Suzanne Rab,David Scorey KC,2024-02-08 This unique book formed as a series of essays in honour of the memory of Paul Heim CMG the founder of Lincoln s Inn European Group focusses on the building of bridges between individuals and institutions in European international and human rights law The book features contributions from some of the foremost current or former European and international judges leading practitioners and officials each with links to Lincoln s Inn and former recipients of Lincoln s Inn s dedicated scholarship programmes The approachable style of the book makes it readily accessible for a wide range of readers including legal scholars practitioners students and those with a general interest in the application of the law and justice in today s interconnected world Each contribution provides personal reflections and expertise on selected aspects of European and human rights law and the personal professional and technical bridges involved in their development and maintenance together with insights into their future The book provides multi level perspectives on the Court of Justice of the European Union the EFTA Court the European Court of Human Rights and the International Criminal Court and the interaction of their jurisprudence with domestic law and between themselves alongside our ever evolving societies **Digital Constitutionalism in Europe** Giovanni De Gregorio,2022-05-26 This book is about rights and powers in the digital age It is an attempt to reframe the role of constitutional democracies in the algorithmic society By

focusing on the European constitutional framework as a lodestar this book examines the rise and consolidation of digital constitutionalism as a reaction to digital capitalism The primary goal is to examine how European digital constitutionalism can protect fundamental rights and democratic values against the charm of digital liberalism and the challenges raised by platform powers Firstly this book investigates the reasons leading to the development of digital constitutionalism in Europe Secondly it provides a normative framework analysing to what extent European constitutionalism provides an architecture to protect rights and limit the exercise of unaccountable powers in the algorithmic society This title is also available as open access on Cambridge Core

The Evolution of EU Law Paul Craig, Gráinne De Búrca, 2021 This last decade has been particularly turbulent for the EU Beset by crises the financial crisis the rule of law crisis the migration crisis Brexit and the pandemic European Law has had to adapt and change in a way not previously seen First published in 1999 the goal then was to reflect on the important developments that had been made since the creation of the EEC That goal has not changed From EU Administrative Law through to the Regulation of Network Industries each chapter in this seminal work assess the legal and political forces that have shaped the evolution of EU law With new chapters covering the Rule of Law Judicial Reform Brexit Constitutional and Legal Theory Refugee and Asylum law and Data Governance this third edition of *The Evolution of EU Law* is a must read for any student or academic of EU law

The Influence of Human Rights and Basic Rights in Private Law Verica Trstenjak, Petra Weingerl, 2015-12-16 This book provides a comparative perspective on one of the most intriguing developments in law the influence of basic rights and human rights in private law It analyzes the application of basic rights and human rights which are traditionally understood as public law rights in private law and discusses the related spillover effects and changing perspectives in legal doctrine and practice It provides examples where basic rights and human rights influence judicial reasoning and lead to changes of legislation in contract law tort law property law family law and copyright law Providing both context and background analysis for any critical examination of the horizontal effect of fundamental rights in private law the book contributes to the current debate on an important issue that deserves the attention of legal practitioners scholars judges and others involved in the developments in a variety of the world's jurisdictions This book is based on the General Report and national reports commissioned by the International Academy of Comparative Law and written for the XIXth International Congress of Comparative Law in Vienna Austria in the summer of 2014

The Constitutional Dimension of Contract Law Luca Siliquini-Cinelli, Andrew Hutchison, 2017-04-06 One of the hallmarks of the present era is the discourse surrounding Human Rights and the need for the law to recognise them Various national and supranational human rights instruments have been developed and implemented in order to transition society away from atrocity and callousness toward a more just and inclusive future In some countries this is done by means of an overarching constitution while in others international conventions or ordinary legislation hold sway Contract law plays a pivotal role in this context According to many this is done through the much debated civilising mission of the contract a notion which itself

constitutes the canon of the Western liberal principle of civilised economy The movement away from the belief in the absolute freedom of contract which reached its zenith in the nineteenth century to the principles of fairness and justice that underpin contract law today is often deemed to be a testament to this civilising influence Delving into the interplay between human rights policies constitutional law and contract law from both theoretical and practical perspectives this first volume of a two book collection offers a totally new reappraisal of the subject by gathering a collection of essays written by contract law scholars from Europe South Africa Canada and Australia Instead of providing the reader with a sterile compilation of positivistic norms and policies on the impact of fundamental rights and constitutional law issues on contract law s development the authors build on their personal experience to analyse specific topics related to contracting that include a constitutional dimension The book fills an important void in comparative law scholarship and in so doing represents the starting point for further debate on the subject

Transnational Legal Processes and Human Rights Lauren Fielder, 2016-02-17 It is becoming increasingly common for human rights norms to be transferred between legal and political systems and this book is a fresh approach to the intersection of transnational law and the protection of cultural difference beyond the single state border It investigates how the construction and evolution of human rights norms are transferred in transnational legal settings and asks whether law should reflect express or control any given aspect of culture The chapters explore the ways that law and cultural identity may or may not co exist particularly in circumstances where a prima facie clash is observed Examining legal approaches to cultural differences from a comparative perspective and across a wide range of locations the book covers topics such as juvenile punishment religious defamation religious rights and conflict between industry and indigenous communities It will be of value to those working in the areas of transnational and comparative law as well as those concerned with human rights and the intersection of law and cultural difference

The Laval and Viking Cases Roger Blanpain, Andrzej Wi?tkowski, 2009-01-01 in this book nineteen labour law scholars present country reports detailing challenges and consequences of the rulings evident in twelve EU Member States as well as in Norway and Russia Among many others the salient issues covered include the following cross border solidarity among workers collective action as a fundamental freedom the prospects for an EU minimum wage plan the social partners approach to national labour law the harmonisation of social security standards and the scope of enforcement by Member State labour regulatory authorities

Unconscionability in European Private Financial Transactions Mel Kenny, James Devenney, Lorna Fox O'Mahony, 2010-06-24 Given the unprecedented recent turmoil on financial markets we now face radically challenged post Lehmann assumptions on protecting the vulnerable in financial transactions This collection of essays explores conceptions of and responses to unconscionability and similar notions across Europe with specific reference to financial transactions It presents a detailed analysis of concepts of unconscionability in Europe against a backdrop of Commission initiatives aimed variously at securing a single market in financial services producing greater coherence in EC consumer protection law and

consolidating European private law This analysis illustrates for example that concepts of unconscionability depend on context and can be shaped by a variety of factors It also illustrates that jurisdictions may choose to respond to questions of unconscionability through a variety of legal instruments located in different branches of the law rather than through a single doctrine Thus this collection illuminates many of the obstacles facing harmonisation in this area **Modern European and Chinese Contract Law** Junwei Fu, 2011-01-01

This comparative study of European and Chinese contract law opens a clear and practical way to identify and understand the differences between the two legal regimes The author offers a detailed doctrinal comparison of the two systems of contract focusing on the following fundamental elements the importance of socio economic valuation in Chinese contract law the role of judicial interpretation pre contractual liability penalties for bad faith disclosure versus concealment validity mistake fraud threats unfair bargaining power adaptation and termination effect of registration and approval rules mandatory rules good faith and fair dealing the public interest and direct application of constitutional law to contracts The book s special power lies in its extraordinarily thorough comparison of doctrines underlying specific provisions of such instruments as the Contract Law of the People s Republic of China CLC the General Principles of the Civil Law of the People s Republic of China GPCL the Principles of European Contract Law PECL and the Draft Common Frame of Reference DCFR as well as analysis of judicial cases **The European Human Rights Culture - A Paradox of Human Rights Protection in Europe?** Nina-Louisa Arold Lorenz, Xavier Groussot, Gunnar Thor

Petursson, 2014-04-30 The European Human Rights Culture A Paradox of Human Rights Protection in Europe analyses the political term European Human Rights Culture a term first introduced by EU Commission President Barroso Located in the fields of comparative law and European law this book analyses through first hand interviews with the European judiciary the judicial perspective on the European human rights culture and sets this in context to the political dimension of the term In addition it looks at the structures and procedures of the Court of Justice of the European Union CJEU and the European Court of Human Rights ECtHR and explains the embedding of the Courts legal cultures It offers an in depth analysis of the margin of appreciation doctrine at both the CJEU and ECtHR and shows its value for addressing human rights grievances This book is novel in that it combines interviews and case law analysis to show how a mix of differences on the bench are legally amalgamated to resolve probing legal questions and human rights issues It shows through a combined analysis of case law and recent political developments for European human rights the tensions between judicial and political approaches and the paradox of human rights protection in Europe It also offers in depth knowledge of the European human rights discourse In addition to a rich study of legal materials the book looks inside the box by adding the judiciary s perspective Human rights are widely acknowledged in European societies and cases claiming human rights violations are increasing at both the CJEU and ECtHR In these times of increased human rights awareness this book uncovers a paradox in European human rights protection which is created by the push and pull between judicial and political interests **Tort Law in the**

Jurisprudence of the European Court of Human Rights Attila Fenyves, Ernst Karner, Helmut Koziol, Elisabeth Steiner, 2011-11-30 The goal of this study is to provide a general overview and thorough analysis of how the European Court of Human Rights deals with tort law issues such as damage causation wrongfulness and fault the protective purpose of rules remedies and the reduction of damages when applying art 41 of the European Convention on Human Rights ECHR These issues have been examined on the basis of a comprehensive selection and detailed analysis of the Court's judgments and the results compared with different European legal systems Austria Belgium England and Wales France Germany Hungary Ireland Italy Poland Romania Scandinavia Spain Switzerland and Turkey EC Tort Law and the Principles of European Tort Law The introduction of art 41 ex art 50 ECHR in 1950 as a compromise and the issues it raises now the methodological approaches to the tort law of the ECHR the perspectives of human rights and tort law and public international law as well as the question of whether the reparation awarded to victims of ECHR violations can be considered real just satisfaction are addressed in five special reports two of which are also available in German Concluding remarks try to summarise the outcome

Regulating Unfair Banking Practices in Europe Stephen Weatherill, Aurelia Colombi Ciacchi, 2010 Private persons often stand surety for a business debt incurred by family members friends or employers These suretyships are commonly banking guarantees contracted by means of standard terms Sometimes the guarantor signs the contract while he she is not aware of the financial risk related to the guarantee He or she may not even know what a suretyship is But in other circumstances the guarantor may be well aware of the risk but may nonetheless assume it because of strong emotional ties which exist between him her and the main debtor How then if at all does the law address the potential for unfairness in such situations Some systems choose to rely on objective criteria such as identification of a manifest disproportion between the guaranteed amount and the surety's income and assets while others are more open to subjective inquiry The key point is variation Different jurisdictions in Europe operate different models with different priorities This book provides a comparative overview of the remedies against unfair obligations of non professional guarantors available in 22 EU Member States based on a questionnaire which has been completed by an expert in each particular jurisdiction and covering both legal rules and the economic context of different credit markets and banking practices

The Oxford Handbook of the Indian Constitution Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta, 2016 As the first major post colonial constitution the Indian Constitution holds particular importance for the study of constitutional law and constitutions Providing a thorough historical and political grounding this Handbook examines key debates and developments in Indian constitutionalism and creates a framework for further study

The Harmonisation of European Contract Law Stefan Vogenauer, Stephen Weatherill, 2006-03-16 After an extended period in which the European Community has merely nibbled at the edges of national contract law the bite of a European contract law has lately become more pronounced Many areas of law from competition and consumer law to gender equality law are now the subject of determined efforts at harmonisation though they

are perhaps often seen as peripheral to mainstream commercial contract law. Despite continuing doubts about the constitutional competence of the Commission to embark on further harmonisation in this area, European contract law is now taking shape with the Commission prompting a debate about what it might attempt. A central aspect of this book is the report of a remarkable survey carried out by the Oxford Institute of European and Comparative Law in collaboration with Clifford Chance which sought the views of European businesses about the advantages and disadvantages of further harmonisation. The final report of this survey brings much needed empirical data to a debate that has thus far lacked clear evidence of this sort. The survey is embedded in a range of original and up to date essays by leading European contract scholars reviewing recent developments, questioning progress so far and suggesting areas where further analysis and research will be required.

Human Rights and Private Law Katja S Ziegler, 2007-04-26 Privacy today is much debated as an individual's right against real or feared intrusions by the state as exemplified by proposed identity cards and surveillance measures in the United Kingdom. In contrast, invasions of privacy by private individuals or bodies tend to arouse less concern. This book attempts to fill the gap by looking at the horizontal application of human rights after *Douglas v Hello*, *Campbell v MGN* and *Caroline von Hannover v Germany*. It provides a conceptual and theoretical framework and also considers specific particularly sensitive areas of law relating to privacy protection such as intellectual property, employment and media law. It provides comparative perspectives by relating Article 8 of the European Convention on Human Rights which serves as a focal point to UK, Dutch, German and European Communities law. Several common threads are revealed running across jurisdictions and different areas of law and aspects of privacy. The most notable is the definition of privacy in terms of the autonomy of the individual, a notion associated with the liberal state in the classic sense but now acquiring more content as a human right also linked to ideas of social justice.

Human rights in a multilevel constitutional area Nóra Chronowski, 2018-05-24 No constitutional question is worthwhile to discuss through the prism of solely the national legal system. Our understanding of backsliding and perils challenging liberal constitutionalism should move ahead. For that purpose the multilevel approach of this book provides thorough analysis on certain current global, European and Hungarian issues in the field of human rights protection. Business and human rights at the global stage, common fundamental rights standards and their enforcement in the European legal space and the rule by law constitutionalism of Hungary.

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



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