abstract rights
real security 526–7
see also rights
abstractness principle
agency and representation 36, 37–9
abuse of dominance
EC and US competition law
compared 176–7
Académie des Privatistes Européens
251, 255
acceptance
inter absentes
counter-offer and 509
late 510–11
time limit 510
see also offer and acceptance inter absentes
access to justice
locus standi or, administrative law 26
see also justice
accession
property rights and real rights and
593
accident compensation
alternative solutions 8–9
empirics 12–13
environment, catastrophes and
terrorism 10–11
harmonization 9–10
interest in, reasons for increased 1–2
liability and insurance 5–8
medical malpractice 11–12
social security 4–5
systems, general scope of 2–4
trends 13–14
see also damages; remedies
accidents
damages for, USA 67
Ackerman, Bruce 190
acquisition
nationality, ex lege, grounds for
484–6
original, property rights and real
rights 593
action
causes of, common law 155–6
forms of, common law 148
history of, common law 155
law of, equity and, common law 157
ADB see Asian Development Bank
administrative law
access to justice, locus standi or 26
administrative justice, procedural
versus substantive 24–5
comparative 603–4
contribution to legal families,
legal transplants and legal
cultures 604–5
development of discipline 18–20,
27–8, 604
languages and 608
methodology, specificity of 607–8
different branches, shifting
boundaries between from one
legal system to another 605–6
general principles 22–4
international, transnational law and
743–5
Japan 363
judicial remedies 27
judicial review, types and degree
26–7
methodological foundations
comparative analysis objective,
determining 20
comparative research objectives in
21–2
functionality principle, applying
20–21
national legal systems, supranational
and international legal systems
compared 606–7
principles, finding ‘common core’ of
608
private law and
distinguished, South Africa 667–8
shifting boundaries between 605–6
sources of law, as, USA 68
transnational law and 745
unjustified enrichment and 778
ADR see alternative dispute resolution
Africa
Central, insolvency law 301
interpretation of contracts and 343
Russian law influence on 638
social security 658
see also Algeria; Burundi
agency and representation
abstractness principle in
contemporary law 37–9
actual authority 39–40, 42–4
apparent authority 40–43
authorizations 45–6
autonomous concepts, as,
development of 35–7
background 33
consensual representation and legal
representation 34
convergent tendencies 54
formalities 45
indirect representation 47–8
partially disclosed agency 47
publicity principle 46–7
ratification 44–5
terminology 33–4
undisclosed principal doctrine 48–54
vicarious liability 35
see also commercial law
agreement
arbitration 83–5
competition, EC and US
competition law compared
173–4
inter praesentia, offer and 505–6
parties, of, offer and acceptance inter
absentes
consensual and real contracts
497–500
consent 501–4
definitions of 500–501
see also consent; contract
Agreement for the Union of the Scots
and English Parliaments 1707 642
AIDA see Association Internationale
de Droit des Assurances
AIDC see Associazione Italiana di
Diritto Comparato
Albert, Michel 318
Algeria
private international law 576
see also Africa
ALI see American Law Institute
alternative dispute resolution (ADR)
insolvency law and 316
Japan 366
trends and developments in national
systems of civil procedure and
127–8
see also arbitration
America see Latin America; United
States of America
American Convention on Human
Rights 1969 480
see also Conventions
American Law Institute (ALI)
agency and representation and 46,
49, 50, 51
breach of contract and, remedies for
616–17
civil procedure and 125, 130
consideration and 183, 184, 185
European Civil Code and 250
insolvency law and 300–301
interpretation of contracts and 325
mistake and 455, 463, 464
offer and acceptance inter absentes
501
privacy and 557
private international law and 568,
573
product liability and 579, 580, 581
sources of law and 69
unjustified enrichment 767
see also United States of America
antitrust law see competition law
arbitration
agreement 83–5
arbitrability, subjective and objective
83
award 87–8
courts’ role in 88–9
defined 78
national laws, development and
harmonization of 79–80
private international law and 573–4
sources of law, statutory (public)
and contractual (private) 80–83
tribunal 85–6

784 Elgar encyclopedia of comparative law

Jan M. Smits - 9781847200204
Downloaded from https://www.elgaronline.com/ at 10/19/2023 03:19:39PM via free access
jurisdiction and powers of, proceedings and 86–7
use and advantages of 80
see also alternative dispute resolution

Argentina
interpretation of contracts 328
offer and acceptance inter absentes 502
see also Latin America

Asia see South-East Asia

Asian Development Bank (ADB) 302
assignment
assignee and debtor relationship 97–8
contract, further requirements and 94–7
contractual prohibition of 98–101
defined 91
one or more subsequent, priority in case of 101–3
prerequisites for 91–2
rights, of assignee to performance by debtor 91
sources of law, international and national 92–4
see also insolvency

Association Internationale de Droit des Assurances (AIDA) 315
Associazione Italiana di Diritto Comparato (AIDC) 356

assumpsit
consideration and 180–81
Atiyah, P.S. 183, 408, 419–20
Ault, Hugh 712

Australia
civil law 107–8
commercial law 108
constitutional law 106–7
court system 108
interpretation of contracts 336, 342
languages 105–6
law faculties 108–9
legal system 105–6
nationality law 485
privacy 556
statutory interpretation 677, 682, 683
trust law 762

unjustified enrichment 767
see also Commonwealth

Austria
accident compensation 8
assignment 102
breach of contract and, remedies for 622, 623
civil procedure 123, 126, 127, 128
constitutional law 192
family law 261
interpretation of contracts 342, 344
nationality law 486, 489
offer and acceptance inter absentes 500
personality rights 539
real security 526
statutory interpretation 677, 682
see also Civil Code (Austria);
European Union

authority
actual, agency and representation 39
agent acting without, liability of 43–4
apparent authority distinguished 42–3
apparent, agency and representation 40–41
actual authority distinguished 42–3
legal consequences 42
requirements 41–2
interpret, to, statutory interpretation and 681–2
irrevocable authorizations, agency and representation 46
legally-fixed authorizations, agency and representation 45–6
authors
personality rights 542

autonomy
states, of, nationality matters and 478
award
arbitration 87–8

Barak, Justice 333
Barassi, Marco 712

behavioural economics
future of comparative law and economics and 167
see also economics
Beinart, B. 51
Belarus
offer and acceptance inter absentes 506
Belgium
accident compensation 8
civil law 112–13
civil procedure 127
commercial law 113
constitutional law 110–12, 192
court system 113–14
family law 261
insurance law 318
interpretation of contracts 334–5, 338–9, 345
languages 110
law faculties 114
legal system 110
offer and acceptance inter absentes 512–13
personality rights 532
property rights and real rights 599
see also Civil Code (Belgium); European Union
Berne Convention to Reduce the Number of Cases of Statelessness 1973 480–81, 484
see also Conventions
Beveridge Report 653
BGB see Civil Code (Germany)
Birks, Peter 770, 775
Blackstone, Sir William 396
Blankenburg, Erhard 373, 375
Bona, Marco 239
books see publications
Brandeis, Justice 558
breach of contract
personality harm and 543–4
remedies for 610–12, 625–7
monetary relief 621–5
specific performance, claims for 617–21
termination of contract and restitution 612–17
Bridge, M.G. 594, 598
Browne-Wilkinson, Sir Nicolas 154
Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 131, 428
see also Conventions
Bulgaria
interpretation of contracts and 329
Burrows, Andrew 770–71
Burundi
interpretation of contracts 328
see also Africa
business law
commercial law to 136–7
commercial regulation from 137–40
see also corporate governance
Cafaggi, F. 164
Canada
agency and representation 38, 51
civil and commercial law 117–18
civil code, Quebec 247
constitutional law 116–17
court system 118
family law 267
insolvency law 295
languages 116
law faculties 119
legal system 116
mixed jurisdictions 473
offer and acceptance inter absentes 501, 503
privacy law 558–60
statutory interpretation 677
trust law 758
see also Commonwealth
case law
common law, pragmatism and policy and 152
legal style and, USA 71
legal transplants and 436–7
sources of law, as, USA 68–9
Case Legal Consequence Pair (CLCP) 411–12
catastrophes
accident compensation and 10–11
causation
product liability and 584–5
tortious liability and 724
CEFL see Commission on European Family Law
CERCLA
accident compensation and 10
Chaufton 313
Chile
offer and acceptance inter absentes 498
see also Latin America

China
culture 378
Dutch Civil Code and 493
interpretation of contracts 329, 345
Russian law influence on 638
see also South-East Asia

choice
consumer protection and 203

CISG see UN Convention on
Contracts for the International Sale of Goods

Civil Code (Austria)
assignment and 96–7, 100
offer and acceptance inter absentes 501, 505, 506
statutory interpretation 680
see also Austria; civil law

Civil Code (Belgium)
basis of 110, 112
interpretation 113
interpretation of contracts and 326, 328, 335, 336, 340
see also Belgium; civil law

Civil Code (European) see European Civil Code

Civil Code (France)
agency and representation and 35, 36, 38, 40
assignment and 95–6, 102
breach of contract and, remedies for 614, 618, 622, 624–5
commom law and 146
damages and 234
force majeure and supervening events and 690, 691, 692
interpretation of contracts and admissibility of extrinsic evidence doctrine, interpretation doctrine and 335–6
implied terms 326
parol evidence rule and 337, 338–40
statutory precepts 328
wider sense 343, 344
mistake and 457, 458, 460–61
Netherlands and 495
offer and acceptance inter absentes 498, 499, 501, 503
privacy and 557
tort law and 6
unjustified enrichment and 770, 773
see also civil law; France

Civil Code (Germany) (BGB)
agency and representation and 36, 37, 44, 45, 47
assignment and 96, 100
breach of contract and, remedies for 613–14, 617–18, 622
damages and 234
family law and 269
force majeure and supervening events and
avoidance of contract 690, 691
duty to renegotiate 693
foreseeable events 695
self-induced events 696
notions of supervening events 692, 693
interpretation of contracts and 328, 331–2, 335, 343, 345
Lithuania and 439
mistake and 456, 457, 459, 460, 461–2
offer and acceptance inter absentes agreement inter praesentes 506
agreement of parties, definitions 501
express and implied consent 502, 503
late acceptance 510
revocable and irrevocable offer 508
personal and real security 527
privacy and 563, 564
property and real rights and 588–9, 591, 600
tort law and 724, 726
transfer of movable property and 734
unjustified enrichment and 770, 771, 774
see also civil law; Germany

Civil Code (Italy)
agency and representation and 53
assignment and 96, 100, 102
breach of contract and, remedies for 614, 618
force majeure and supervening events and 691
interpretation of contracts 326, 328, 339
offer and acceptance inter absentes acceptance and counter-offer 509 agreement of parties, definitions 501 causa 497 consensual and real contracts 498, 499–500 express and implied consent 502, 503 information theory 512 late acceptance 510 offer to public 506 silent consent 503, 504 tort law and 725–6 unjustified enrichment and 772 see also Civil Code; Italy
Civil Code (Netherlands) agency and representation and 40, 44, 45, 50, 52–3 breach of contract and, remedies for 614 interpretation of contracts and 345 legal transplants and 493 mistake and 457 personal and real security 519, 521, 522 property and real rights and 596, 597 transfer of movable property and 734 see also Netherlands
civil law
Australia 107–8
Belgium 112–13
Canada 117–18
Czech Republic 230–31
England and Wales 243–4
Greece 291–2
Israel 350
Italy 354–5
Lithuania 439–40
mistake and 455
Netherlands 494–5
Poland 549–51
property rights and real rights and 588–9
Scotland 645–6
Spain 673, 674–5
Sweden 700
Switzerland 704–5
trust law and 757–8 unjustified enrichment and 768 see also Civil Code
civil procedure background 120–22 families of 122–4 harmonization of law of 128–32 national systems 125–8 principles 124–5 civil rights see human rights Clarke, Malcolm 312 classification civil procedure rules 120–21 common law causes of action 155–6 foundational subjects and legal knowledge 157–8 history of actions 155 law of actions, equity and 157 liability, general principles of 156–7 insurance law 317–18 mistake 456–7 trusts 762 unjustified enrichment, variations 773–6 science, comparative law as instrument of 59–60 world legal systems 382–5 different attempts 385–7 recent developments 387–9 see also legal families CLCP see Case Legal Consequence Pair
codification common law and 150 Europe 393, 394, 398–400 European Civil Code and 248–9 Scotland 648–9 USA and 69 Coing, H. 401–2 Comité Européen des Assurances 315
commercial law
Australia 108
Belgium 113 business law from 136–7 Canada 117–18
Czech Republic 231–2
England and Wales 243–4
Greece 292
Israel 350
Italy 354–5
Lithuania 439–40
mixed jurisdictions and 474
Netherlands 494–5
Poland 551
Scotland 643, 647
South Africa 669
Spain 675
Sweden 700
Switzerland 705
see also agency and representation; lex mercatoria; Principles of International Commercial Contracts
commercial regulation
background 135
from business law to 137–40
commercial law to business law 136–7
to corporate governance 140–42
study of 142
see also regulation
commingling
property rights and real rights and 593
Commission on European Family Law (CEFL) 262–3, 264, 269–70
see also European Union; family law
common law
action, forms of 148
background 145–6
civil procedure and 122
conceptualism and customary law 150
court of chancery 147–8
courts, early 146–7
feudalism and 146
jury, orality and 148–9
mentality and methods 149
mixed jurisdictions and 471–2
offer and acceptance inter absentes 500–501
pragmatism and policy 152
precedent 150–51
privacy and, other than England and Wales 556–7
property rights and real rights and 588–9, 592
ratio decidendi 151–2
remedies and rights 154
science, absence of 158–9
statutory interpretation 152–3
structure and taxonomy 154–8
teaching and practice of law 150
terminology 145
unique institution of, trust as 756–7
unjustified enrichment and 767
see also England and Wales; United States of America
Commonwealth
common law and 145
insolvency law 299
personal and real security 522
unjustified enrichment 767
see also individually named member states
comparative law
administrative law 603–4
contribution to legal families,
legal transplants and legal cultures 604–5
development of discipline 18–20,
27–8
languages and 608
methodology, specificity of 607–8
aims 57–8, 60–62
comparison, as 63–4
constitutional
established discipline, as 604
study of 187–8
criminal law 221
common ground and policy
matters 222–3
methodology 218–21
internationalization 215–18
law reform and 215
practical relevance 214–15
systematic versus positivist thinking 221–2
economics and 161
future 166–70
institutions and 164–5
law and economics, renewal of 165–6
legal rules, competitive model of 161–4
family law as contested field of development of discipline different or complementary? insolvency, short history of instrument of evolutionary and taxonomic science, as instrument of learning and knowledge, as insurance, literature methodology limits methods phases problems research, nature of terminology test for success private international law and private law, development of resulting tendencies of Russia statutory interpretation and, place in tax law as terminology translation and USA Comparative Law and Economics Forum comparison methodology competition comparative law and economics and consumer protection and competition law convergence divergence US and EU compared competitive model legal rules, of competitive paradigm private international law comparative law and contract and arbitration and globalization impact on systems interjurisdictional competition, mobility as factor of conceptualization phase methodology conduct abusive, EC and US competition law compared others, of, tortious liability for subsequent, of parties, parol evidence rule and confirmation phase methodology conflict of laws principles, functional nature of EU rules, coordination of legal systems and traditional tools see also private international law consent agreement of parties and, offer and acceptance inter absentes defined express and implied silent negated by mistake nullified by mistake see also agreement consideration assumpsit defining in 19th and early 20th centuries doctrine use of to police fairness of contracts of exchange see also common law; contract Constitutional Court (Germany) see also courts constitutional law Australia Belgium Canada comparative established discipline, as study of concept constitution
comparing 190–91
concept 188–9
constitutionalism, concept 189–90
Czech Republic 229–30
England and Wales 242–3
European
development of 193–6
Treaty establishing a constitution for Europe 196–8
European Civil Code and 254
Germany 274–5, 276, 277
Greece 289–90
Israel 349–50
Italy 353–4
Japan 360–62
judicial review 191–3
Lithuania 493–4
Poland 548–9
Russia 630, 631, 632–4, 638
separation of powers, USA 70–71, 188
sources of law, as USA 68
South Africa 668–9
Spain 672–4
Sweden 700
Switzerland 702–4
terminology 187–8
consumer protection
choice and 203
competition and 200, 201–2
culture and 201
economics and 202
Germany 285
inequality and 205–6
information disclosure and 202–3, 204–5
regulation 205
role of law in 200–202
Sweden 699
continental legal system see European Union; Roman law
contract
assignment
further requirements and 94–7
prohibition 98–101
avoidance of, force majeure and supervening events and 690–91
breach of see breach of contract
European Civil Code and 252
insurance, one-sidedness of, insurance law principles and 317
interpretation see interpretation of contracts
liability in, mistake and 457–8
mandate, of, agency and representation and 35–6, 37, 38
private international law and 573–4
supervening events and, provisions to contrary 694–5
termination of, restitution and 612–17, 625–6
unjustified enrichment and 776–7
see also agreement; consideration; insurance law; offer and acceptance inter absentes; Principles of European Contract Law; Principles of International Commercial Contracts
contributory negligence
tortious liability and 727
see also negligence
control
merger, EC and US competition law compared 175
supreme court, of, interpretation of contracts and 334–5
see also regulation
Conventions
American, on Human Rights 1969 480
Berne, to Reduce the Number of Cases of Statelessness 1973 480–81, 484
Brussels, on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 131, 428
Certificate of Nationality 1999, on a 481
Council of Europe, on the Liability of Hotel Keepers Concerning the Property of Their Guests 1962 690
European see European Convention on Human Rights; European Convention on Nationality; European Conventions
Geneva, Relating to the Status of Refugees 1951 479
Hague see Hague Conventions
Havana, on Private International Law 1928 300
Inter-American, on International Commercial Arbitration 1975 (Panama Convention) 81
International see International Conventions
International Sale of Goods 1980, on the 690
Lugano, 1988 131
Montevideo see Montevideo Conventions
New York see New York Conventions
Nordic, Bankruptcy 300
Paris, on the Exchange of Information Regarding Acquisition of Nationality 1964 480
Rome, on the Law Applicable to Contractual Obligations 92, 573
Strasbourg, on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1963 480, 483, 484
UN see headings beginning UN Convention
Vienna see Vienna Conventions see also treaties
convergence
accident compensation 1, 9–10, 13
administrative law 19–20, 27
agency and representation 54
arbitration, national laws 79–80
breach of contract, remedies for 611–12, 626–7
civil procedure law 128–32
comparative law and 61–2
competition law 173–5
competitive model of legal rules and 162–3
criminal procedure 223–5
family law 260–61, 263, 269
insolvency law 302–6
insurance law 322–3
mistake 464–5
personal security 520
private law 208–13
property rights and real rights 589–91
tax law 710
tort law 7
see also divergence
corporate governance
from commercial regulation to 140–42
transnational law and 742–3
see also business law; commercial law
Council of Europe
civil procedure and 129
Convention on the Liability of Hotel Keepers Concerning the Property of Their Guests 1962 690
social security law 660–61
see also Conventions; European Union
counter-offer
acceptance inter absentes and 509
see also offer and acceptance inter absentes
Cour de Cassation (Belgium) 113, 334–5
Cour de Cassation (France) 40, 334, 506, 561–2
court of chancery
civil procedure and 122
common law and 147–8
court systems
Australia 108
Belgium 113–14
Canada 118
Czech Republic 232
England and Wales 244–5
Germany 278–9
Greece 292
Israel 350–51
Italy 355
Japan 363–6
Lithuania 440–41
Netherlands 495–6
Poland 551
Scotland 646–7
South Africa 670
Spain 675–6
Sweden 700–701
Switzerland 705–6
see also institutions, judicial courts
common law, early 146–7
constitutional law and 193, 196
role in arbitration 88–9
see also individually named courts
creditworthiness
personality rights 542–3
crime
international, accident
compensation and 4, 8
criminal law
comparative 221
common ground and policy
matters 222–3
methodology 218–21
internationalization 215–18
law reform and 215
practical relevance 214–15
systematic versus positivist thinking 221–2
criminal procedure
adversarial and inquisitorial modes,
convergence 223–5
Critical Legal Studies 72
Cross-Border Insolvency Concordat
1993 303–4
culture
classification of legal families and
386
comparative law and economics and
164, 168
comparative public law contribution
to 604–5
competitive model of legal rules and
163, 164
consumer protection and 201
criticisms 373–5
équité and, interpretation of
contracts 343
good faith and, interpretation of
contracts 343
insurance law 318–20
national, and beyond 378–9
researching 376–8
sociology of law, in 372–3
terminology 372
using 375–6
see also Ultimatum Game
Currie, Brainerd 568, 570
customary law
classification of legal families and
388–9
custom law conceptualism and 150
customs see culture
Czech Republic
civil law 230–31
commercial law 231–2
constitutional law 229–30
court system and law faculties 232
legal system 228–9
see also European Union
damage
property
accident compensation and 4, 8
personality harm and 543–4
tortious liability and 725
damages
accidents, for, USA 67
aims of, functions of tort law and
236
background 234–5
breach of contract, for 621–5, 626
claims for, force majeure as defence
to 689–90, 692–3
personal injury 239
personality rights, for 533–4
protected interests and sorts of loss
236–7
pure economic loss 237–9
see also accident compensation;
remedies
Damaska, Mirjan 219
data collection
description phase and, methodology
446–7
David, René 386–7
Dawson, J.P. 181
debtor
assignee and, relationship 97–8
interests of, assignment and 92
performance by, assignee’s rights to
91
see also insolvency
default rules
coordination of legal systems and
212
defectiveness
product liability and 582–3

defects
categories of, product liability 580–81

defences
force majeure, against damages claims 689–90, 692–3
tort law and 727

definitions
agreement of parties 500–501
arbitration 78
assignment 91
consent 498
exchange 182
interpretation 677
mistake 455
nationality 476
negligence 721
Russian law 630
tort law 719
trust 755
see also terminology
delay see time, late
delict
Scotland 643–4
unjustified enrichment and 777
see also tort law
Delmas-Marty, Mireille 219
Demogue, René 690
Denmark
administrative law 605
family law 265
breach of contract, remedies for 618
interpretation of contracts 329, 344
offer and acceptance inter absentes 500, 512–13
see also European Union; Nordic law; Scandinavia
descriptive phase
methodology 446–9
development
law and economics renewal and 165–6
risks, product liability 583
dignity
personality rights 538–9
divergence
competition law 176–8
insurance law 318–22

see also convergence
domestic law
arbitration, development and harmonization 79–80
insolvency, prominent principles of 296–7
interpretation, foreign criminal law and 214–15
duties
renegotiate, to, force majeure and 691–2

earning capacity
personality rights 542–3
EBRD see European Bank for Reconstruction and Development
EC Treaty see Treaty of Rome 1957
ECHR see European Convention on Human Rights; European Court of Human Rights
ECJ see European Court of Justice
economics
analysis of behaviour permissible under competition rules, EC and US competition law compared 174–5
behavioural, future of comparative law and economics and 167
comparative law and 161
future 166–70
institutions and 164–5
law and economics, renewal of 165–6
legal rules, competitive model of 161–4
consumer protection and 202
experimental, future of comparative law and economics and 167
law and, accident compensation 2
ECRI see European Credit Research Institute
ECSC see European Coal and Steel Community
ECTIL see European Centre of Tort and Insurance Law
education
Australia 108–9
Belgium 114
Canada 119
common law 150
Czech Republic 232
England and Wales 245
Germany 279
Greece 292
history and comparative law and 394–5, 396, 402, 404
Israel 351
Italy 355–6
Lithuania 441
Netherlands 496
Poland 551–2
Russia 635–6
Scotland 645
South Africa 670
Spain 676
Sweden 701
Switzerland 706
transnational law 748–50
USA 68
see also knowledge; research
EESC see European Economic and Social Committee
England and Wales
administrative law
administrative justice 24
comparative, contribution to legal families, legal transplants and legal cultures 604, 605
different component branches 605
judicial review 26
private law and 605
agency and representation
abstractness principle 37–8
actual authority 39
agent’s liability 44
apparent authority 40–41, 42
authorizations 46
autonomous concepts, as, development of 36–7
indirect representation 48
partially disclosed agency 47
undisclosed principal doctrine 48–50
vicarious liability 35
arbitration 79, 80, 85, 89
assignment 94, 98, 99
breach of contract, remedies for 614–15, 616, 619
civil and commercial law 243–4
civil procedure
classification of rules and 121
families of 122, 124
harmonization and 130–31
national system 125, 126, 127
terminology 120
commercial regulation 136
comparative law and economics 163
consideration 180, 181, 182, 183–4, 185
constitutional law 188, 189, 190, 191, 242–3
consumer protection 203
court system 244–5
criminal law and procedure 224
culture 378
damages in tort 234, 235, 238
family law
convergence and 262
development 260, 261
politics and 265, 266, 267, 268, 269–70
force majeure 691, 692, 693
history 394–7, 398, 400
insolvency law 295, 299
insurance law 316, 317
interpretation of contracts
admissibility of extrinsic evidence doctrine, interpretation
doctrine and 335–6
implied terms 327
parol evidence rule and 341
strict sense 330–31
wider sense 344
languages 242
law faculties 245
legal system 242
mistake
classification 456
consent negated by 458–9
consent nullified by 462–3, 464
contractual liability basis 457
Roman law influence 455
nationality law 477, 485
offer and acceptance inter absentes 505, 506, 507, 508, 514
personal and real security 521–2
personality rights 531
dignity 539
human rights, as 544
identity 541
physical liberty 538
physical-psychological integrity 536–7
protection of 531, 533, 534
reputation 540
privacy law 554–6
private international law 575
property rights and real rights 592–3, 594, 595, 596–7
real security 521, 522–3, 526
reasoning 418–19
Russian law, influence on 637
statutory interpretation 677, 682, 683–4, 685
supervening events 691, 693, 696
tort law 6, 720
transfer of movable property 731, 735–6
trust law 756–7, 758, 762, 763
unjustified enrichment 767, 770–1, 775–6, 777, 779
see also common law; European Union; Scotland
environment
accident compensation and 10
Eörsi, Gyula 386–7
‘équité’
good faith and, interpretation of contracts 343
equity
law of actions and, common law 157
trust law and 756
ESC see European Social Charter
estoppel
doctrine of, doctrine of apparent authority and 40–41
EU see European Union
European Bank for Reconstruction and Development (EBRD) 306, 522, 590, 637
European Centre of Tort and Insurance Law (ECTIL) 2
European Charter of Fundamental Rights 23, 198
European Civil Code
background 247–8
codification, discussing 248–9
constitutional framework 254
European private law, systematizing 253
family law and 261
options 249
European private law, restating 250–51
model code 251
modes of application 251–2
present state of affairs and future prospects 254–5
scope, contract law or civil code 252
European Coal and Steel Community (ECSC) 401
European Commission
civil procedure and 127–8
competition enforcement and 173
criminal law and 217–18
European Civil Code and 247–8, 254–5
history and comparative law and 401
insurance law and 314, 315
merger control and 175
personal and real security and 523
European Convention on Human Rights (ECHR)
administrative law and 22, 606–7
civil procedure and 120, 124–5, 131
comparative law and convergence and 61
constitutional law and 193–4, 195
family law and 260–61
Germany and 276–7
privacy and 554, 555, 560
private international law and 575
property and real rights and 589
Scotland and 648
Switzerland and 706
see also Conventions
European Convention on Nationality 1997
acquisition of nationality ex lege 485
autonomy of states 478
general principles of international law with regard to nationality 481–2
loss of nationality 489–90
multiple nationality 484
nationality defined 476
naturalization 487–8
statelessness 484
see also Conventions
European Conventions
  Adoption of Children 1967, on the 480
  International Commercial Arbitration 1961, on 81
  Products Liability in Regard to Personal Injury and Death 1976, on 579
see also Conventions
European Court of Human Rights (ECHR)
  administrative law and 22
  civil procedure and 125
  constitutional law and 194, 195
  privacy and 555, 556, 562, 564
  social security and 661
see also courts
European Court of Justice (ECJ)
  administrative law and 22–3, 27
  constitutional law and 193, 194–5, 196
  establishment of 401
  European Civil Code and 254, 255
  Lithuania and 440
  nationality law and 478
  private international law and 572
  product liability and 581, 583
  Switzerland and 705
see also courts
European Credit Research Institute (ECRI) 527
European Economic and Social Committee (EESC) 323
European Group on Tort Law see Principles of European Tort Law
European Institute of Social Security 661
European Social Charter (ESC) 660
European Union (EU)
  accident compensation 1, 3, 4, 9, 10–11
  administrative law
    access to justice 26
    administrative justice 25
    convergence and 19–20
    different branches 605–6
    judicial review 27
    methodology 607–8
  national legal systems,
    supranational and international legal systems compared 606–7
    principles, finding ‘common core’ of 608
    private law and 605–6
  civil code see European Civil Code
  civil procedure 123, 127–8, 129–30
  commercial regulation 140, 141
  common law and 145
  comparative law 57, 58, 60, 61–2
  comparative law and economics 161
  competition convergence 201–2
  competition law 172–3
  constitutional law
    comparing constitutions 190
    concept 189
    development 193–6
    judicial review 192, 193
    Treaty establishing a constitution for Europe 196–8
  consumer protection 203, 204
  criminal law and procedure 216–18, 220, 221, 222
  damages in tort and 234, 236
  family law 260–61, 262, 264, 265, 270
  force majeure and supervening events and 689–90, 693
  German law and 285–6
  Germany and 276–7
  history 394–7
    comparative law, development of discipline 400, 401
    language 403–4
    law unification 401–2
    scholarship 403
    teaching subject, as 402
  insolvency law
    convergence 303, 305–6
    current and future trends 307
    international 298
    regulation 299, 300, 301–2
  insurance law
    comparative, literature 315
    common characteristics 316, 318
    contract, technique and industry, as 313–14
    convergence 322, 323
    divergence 320, 321
    foreign markets 322
legal thought, influence on USA 72
nationality law 482–3
offer and acceptance inter absentes 498–9, 507–8, 512–13
personal security 520
personality rights 530–31, 534, 542
plurality of laws, USA compared 70
private international law 569–70, 572, 574, 575–6
product liability
defectiveness 582
development risks 583
legal context 584
liable parties 581
reform 579, 580
property rights and real rights 590–91
real security 522, 523
Scotland and 645, 648, 649–50
social security law 661–2, 663–4
statutory interpretation 682–3, 685
tax law 709
tort law 5–7
trust law 756–7, 759–61
unjust enrichment 779
see also individually named member states; Commission on European Family Law; Council of Europe; Principles of European Contract Law; Principles of European Tort Law; Treaty of Rome
evidence
Anglo-American, mixed jurisdictions and 473–4
extrinsic, doctrine of admissibility of, interpretation doctrine link 335–6
oral, procedure, interpretation of contracts and 341
parol, rule, interpretation of contracts and 336–42
‘expedition’ theory
offer and acceptance inter absentes 513–14
experimental economics
future of comparative law and economics and 167
see also economics, Ultimatum Game
explanatory phase
methodology 449

factual approach
methodology 444

family law
comparative law, contested field of 259

Greece 291
political economy, political culture and the political process and 264–70
problems, perspectives and issues 259–64
see also Commission on European Family Law

feudalism
common law and 146

Finland
culture 378
family law 261
legal transplants 268
product liability 584
see also European Union

Fletcher, Ian F. 297

force majeure
concept 689
functions
avoidance of contract 690–91
defence against damages claims, as 689–90, 692–3
duty to renegotiate 691–2
specific performance, bar to 691

foreign law
criminal law and procedure and 214
influences of
Russian law, on 636–7
US law, on 73
influences on
Russian law, of 637–8
US law, of 73–4
see also international law; legal transplants

foreseeable events
supervening events and 695

France
accident compensation 7, 9
administrative law
access to justice 26
comparative, contribution to legal families, legal transplants and legal cultures 605
different branches 606
private law and 606
rule of law and 19
agency and representation 44, 46, 51–2
arbitration 78, 85
assignment 99–100
breach of contract, remedies for 616, 619, 623
civil procedure 120, 121, 123, 124, 126
codification 398–9
comparative law and economics 163
constitutional law 188, 190, 192
damages in tort 238
family law
convergence and 262
development 260, 261
politics and 264, 266, 270
force majeure and supervening events and 693
Greece and 289
history 398–9
insurance law 316
interpretation of contracts 329–30, 332, 334, 345
mistake 459–60
nationality law 486, 489
offer and acceptance inter absentes 503, 507
personality rights 532, 540, 544–5
privacy law 560–62
product liability 581–2
property rights and real rights 593, 598, 599
real security 523, 526
reasoning 416–17
Russian law, influence on 637
social security 658
statutory interpretation 677, 682, 685
tort law 727
transfer of movable property 731, 733, 734–5
unjustified enrichment 768, 772, 773
see also Civil Code (France); European Union
Friedman, Lawrence 372–3
functional-institutional approach methodology 443–4
functionality principle
administrative law and 20–21
functions
force majeure and supervening events, concepts of 689–92
good faith, interpretation of contracts and 345
legal rules, coordination of legal systems and 208
nationality law 476
tort law 236, 720–21
Gandolfi Group 282
Geneva Convention Relating to the Status of Refugees 1951 479
see also Conventions
Germany
administrative law 19, 23, 26, 27
agency and representation
abstractness principle 37
apparent authority 40, 42
authorizations 45, 46
autonomous concepts, as, development of 35–6
convergent tendencies 54
formalities 45
undisclosed principal doctrine 52
arbitration 79, 85, 89
assignment 102
breach of contract, remedies for 615–16, 622, 623, 625
civil procedure 121, 123, 126–7
codification 399
commercial regulation 136–7, 141
comparative public law contribution to legal families, legal transplants and legal cultures 605
Constitution and constitutional principles 277
constitutional law 190
court structure 278–9
criminal law and procedure 214–15, 221–2
culture 373
damages in tort 238
education and legal professions 279–80
European Civil Code and 251
family law
CEFL and 263
convergence and 262
development 260, 261
politics and 265, 266, 270
force majeure and supervening
events and 689
Greece and 289
history 399, 405
interpretation of contracts 336, 339,
342
Japan and 359–60
law 273–7, 283–6
offer and acceptance inter absentes
499, 500, 507, 509
personal and real security 520, 521
personality rights
dignity 539
identity 540
knowledge of own descent or
parentage 541
physical-psychological integrity
537
protection of 533
publicity or advertising (market)
value of personality interests
543
privacy law 563–5
private law 281–3
property rights and real rights
common law and civil law 589
numerus clausus 593–4, 596,
597–8, 600
original acquisition 591
real security 521, 526, 527
reasoning 417–18
rule of law 280–81
Russian law, influence on 637
social security 653, 654–5, 657, 658
state organs 277–8
statutory interpretation 677, 682,
684, 685, 686
supervening events 690, 692, 693,
694–5
transfer of movable property 731,
732–3, 733–4
trust law 759–60
unjustified enrichment 768, 771–2,
774–5, 777, 778
see also Civil Code (Germany);
European Union
Glendon, Mary A. 261, 263
Glenn, H.P. 151
globalization
comparative administrative law and
19
comparative law and 62
criminal law and 215–18
culture and 379
insolvency law and 304
relationships between legal systems
and, private international law
570–71
transnational law and 739–40
Goff, Lord 151, 770
good faith
insurance law and 317
interpretation of contracts and
343–6
Great Britain see England and Wales
Greece
civil law 291–2
commercial law 292
comparative law and 57
constitutional law 192, 289–90
court system and law faculties 292
interpretation of contracts 328
legal system 289
see also European Union
Grotius, Hugo 397
Gutteridge, Harold C. 260, 263
Hague Conference on Private
International Law 131
Hague Conventions
Adoption, 1993 484–5
Certain Questions Relating to the
Conflict of Nationality Laws
1930, on 478, 479
Law Applicable to Trusts and Their
Recognition 1985, on the 575,
590, 755, 760
see also Conventions
harmonization see convergence
Harvard International Tax Program
711
Harvey, W.B. 181
Havana Convention on Private
International Law 1928 300
see also Conventions
Hellwege, Phillip 777
history
background 393
classification of legal families and 386
codifications 398–400
common law 146–9
actions 155
comparative law and
development of discipline 400–401
different or complementary? 405
continental Europe and Great Britain 394–7
EU law unification 401–2
Germany
Europe and 276–7
legal science and pandectism 274
legislation and 275–6
old empire and Roman law 273–4
political unification and 274–5
insolvency law 295–6
insurance law 315–16
Japan 358–60
language 403–4
natural law 397–8
purists 404
reviews and the web, as reflected in 404
scholarship 403
social security 653
teaching subject, as 402
transnational, societal memory and 748
Hoadly, Benjamin 681
Hoffmann, Lord 331
Holland see Netherlands
Holmes, Marjorie 239
Hong Kong
arbitration 78
statutory interpretation 681–2
see also South-East Asia
Horwitz, M.J. 210
human rights
Czech Republic 229
England and Wales 243
Germany 276–7, 280
litigation, transnational law and 746–7
nationality as 483
personal security and 520
personality rights as 544
Scotland 648
statutory interpretation and 153
USA 68
see also European Convention on Human Rights; European Court of Human Rights;
nationality law; personality rights; privacy
IBA see International Bar Association
ICC see International Chamber of Commerce; International Criminal Court
ICJ see International Court of Justice
ICN see International Competition Network
identity
personality rights 540–41
ideology
classification of legal families and 386–7
IFA see International Fiscal Association
ILO see International Labour Organisation
IMF see International Monetary Fund
implied contract terms
interpretation of contracts and 326, 327–8
see also contract
indemnity principle
insurance law 317
India
civil procedure 122
see also Commonwealth
inequality
consumer protection and 205–6
information
disclosure, consumer protection and 202–3, 204–5
theory, offer and acceptance inter absentes 511–12
insolvency
injurer’s, accident compensation and 8
insurer’s, accident compensation and 7
insolvency law
background 294–5
comparative, short history of 295–6
convergence 302
Cross-Border Insolvency
Concordat 1993 303–4
harmonization through legislation
303
modelling and guiding 304–5
principles 305–6
Principles for A Global Approach
to Multi-Creditor Workouts
304
soft law 303
current and future trends 306–7
domestic, prominent principles of
296–7
international, guiding approaches to
297–8
regulation, forms of 298–302
transfer of movable property and
732–3
see also assignment
institutions
comparative law and economics and
164–5
judicial, mixed jurisdictions 469–70
legal, Russia 634
state, Germany 277–8
trust-like, in continental Europe
759–61
unique, of common law, trust as
756–7
see also court system; international
organizations
insurable interest doctrine
insurable interest doctrine
insurance law principle 317
insurance
accident compensation and 3–5
insurance law
common classifications 317–18
common historical background
315–16
common principles of insurance
contract law 316–17
comparative, literature 315
contract, technique and industry, as
312–15
converging orientations 322–3
differences and divergence 318–22
liability and, accident compensation
5–8
terminology 312–13
tort law and 722
see also contract
Inter-American Convention on
International Commercial
Arbitration 1975 (Panama
Convention) 81
see also Conventions
interests
debtor, of, assignment and 92
insurable, doctrine, insurance law
principle 317
personality, publicity or advertising
(market) value of, personality
rights 543
protected
damages and 236–7
tortious liability and 724
tort law and 721
International Bar Association (IBA)
86, 87, 303
International Bureau of Fiscal
Documentation 714
International Chamber of Commerce
(ICC) 79
International Competition Network
(ICN) 177
International Conventions
Civil and Political Rights 1966, on
480, 484
Elimination of All Forms of
Discrimination of Women 1979,
on the 479, 481
Elimination of All Forms of Racial
Discrimination 1966, on the 480
Rights of the Child 1989, on the
481, 484
see also Conventions
International Court of Justice (ICJ)
482, 603, 607, 639
see also courts
International Criminal Court (ICC)
216, 223, 225
see also courts
International Fiscal Association (IFA)
711–12, 714–15
International Institute of
Administrative Sciences 604
International Labour Organisation
(ILO) 659–60
international law
German political unification and 275
insolvency 297–8
nationality law and 481–2
Russian law and 638–9
tax 710, 711–12
US law and 74–5
see also foreign law; private
international law; transnational
law
International Law of the Sea Tribunal
639
International Monetary Fund (IMF)
712
international organizations
competition law implementation and
177
tax law and 714
see also institutions
International Tax Dialogue (ITD) 714
internationalization see globalization
interpretation
Civil Code (Belgium) 113
concept 325–6
doctrine, doctrine on admissibility of
extrinsic evidence and 335–6
domestic criminal law, foreign law
and 214–15
standard of, good faith as 343–4
statutory see statutory interpretation
statutory precepts 328–9
strict sense, in 329–34
wider sense, in 342–6
see also reasoning
interpretation of contracts
oral evidence procedure 341
parol evidence rule 336–42
suppletive rules 326–8
supreme court, control of 334–5
see also contract
Ireland
family law 260, 261
interpretation of contracts 336
nationality law 477, 485
see also European Union
Islamic law
agency and representation and 53
Israel
civil and commercial law 350
constitutional law 349–50
court system 350–51
interpretation of contracts 332–3
law faculties 351
legal system 348–9
mixed jurisdictions and 468–9, 473
Italy
agency and representation 45–6
breach of contract, remedies for 622,
623, 625
civil and commercial law 354–5
comparative public law contribution
to legal families, legal
transplants and legal cultures
605
costitutional law 353–4
court system 355
education 404
family law 264
history 404
interpretation of contracts 335, 336
law faculties 355–6
legal system 352–3
offer and acceptance inter absentes
507
Russian law, influence on 637
supervening events 691
trust law 760
unjustified enrichment 770, 773–4
see also Civil Code (Italy); European
Union
ITD see International Tax Dialogue
Japan
commercial regulation 136, 139, 140,
141
court structure 363–6
culture 377
history 358–60
insurance law 322
law, role and rule of 369–70
legal principles, foundational 360–63
legal professionals 366–9
legal system 357–8
see also South-East Asia
Jessup, Philip 738–40
Jhering 35
Jolowicz, J.A. 121
Jones, Gareth 770
judicial remedies
administrative law 27
see also remedies
judicial review
  constitutional law and 191–3
  types and degree 26–7
  see also administrative law
jurisdiction
  arbitral tribunal 86–7
  see also mixed jurisdictions
jurists
  divisions between, mixed
  jurisdictions and 469
personality rights 545
jury
  orality and, common law 148–9
justice
  administrative, procedural versus
  substantive 24–5
Kantorowicz 402
Kisch, Isaac 424
knowledge
  comparative, demand for 709
  foundational subjects and, common
  law 157–8
  learning and, comparative law as
  instrument of 58–9
own descent or parentage;
  personality rights 541
  see also education
Koch, Bernhard A. 239
Koh, Harold 744
Konig, Detlef 771–2
Kötz, Hein 261, 263, 387
Koziol, Helmut 239

La Forest, Justice 559
Laband, P. 35–6
Lambert, Edouard 259, 260
Lando Commission on European
  Contract Law 250
  see also Principles of European
  Contract Law
Langbein, J.H. 121, 126–7, 132
languages
  Australia 105–6
  Belgium 110
  Canada 116
  classification of legal families and
  385–6
  comparative public law and 608
  Czech Republic 228
England and Wales 242
Greece 289
history and 403–4
Israel 348
Italy 332
Lithuania 438
mixed jurisdictions and 470–71
Netherlands 493
Scotland 644
South Africa 667
Spain 672
Sweden 700
Switzerland 702, 703
tax law research and 710
  see also translation; terminology
Latin America
  administrative law 605
  arbitration 79
civil procedure 129
insolvency law 300
nationality law 483, 485
Russian law influence on 638
  see also Argentina; Chile; Mexico;
  Panama; Peru; Puerto Rico
law faculties see education
law reform
  criminal law 215
  Scotland 647–8
lawmaking
  interpretation and 685–6
legal families
  civil procedure 122–4
classifying world legal systems
  382–5
  different attempts 385–7
  recent developments 387–9
comparative public law contribution
to 604–5
criminal law, comparative evaluation
  and 219–21
European, damages in tort and 234,
  236–7, 238
problems and prospects 389–91
  see also classification
legal profession see practitioners
legal sociology see sociology of law
legal systems
  Australia 105–6
  Belgium 110
  Canada 116
coordination of see private law, convergence
Czech Republic 228–9
differences in, insolvency law and 294
England and Wales 242
German, private law 281–2
Greece 289
Israel 348–9
Italy 352–3
Japan 357–8
Lithuania 438
national
civil procedure 125–8
public law and, supranational and international legal systems compared 606–7
Netherlands 493
other than German, German law and 283–6
European 285–6
influence of 284
influence on 285
legal comparison 283–4
other than Russian, Russian law and 636
foreign law influences on 636–7
influences on foreign law 637–8
international law and 638–9
Poland 548
reasoning and 420–21
relationships between, globalization and 570–71
Russia 635, 636
South Africa 667
Spain 672
Sweden 699
Switzerland 702
unjustified enrichment and 767–8
see also legal families; mixed jurisdictions
legal transplants
case law and 436–7
comparative public law contribution to 604–5
competitive model of legal rules and 161–2, 164
criminal law and procedure 215
Dutch Civil Code and 493
family law 261–2, 263, 268–9
history 434
identifying 436
interactions and, private international law 567
nature of 434–5
process 435
subject matter 435–6
see also foreign law
legislation see statutes
lex concursus
insolvency law and 298
lex mercatoria
transnational law and 740–42
see also commercial law
liability
agent acting without actual authority 43–4
common law, general principles 156–7
contractual, mistake and 457–8
enrichment, core elements 772–3
insurance and, accident compensation 5–8
strict, tort law and 725–6
tortious 723–4
causation and 724
conduct of others, for 726–7
contributory negligence 727
damage 725
defences 727
negligence 725
protected interests 724
strict 725–6
vicarious
agency and representation 35
tortious 726–7
see also product liability
Liechtenstein
trust law 758
life
personality rights 536
Lindbergh, Siewert 239
literature see publications
Lithuania
civil and commercial law 439–40
constitutional law 438–9
court system 440–41
family law 265
interpretation of contracts 328
law faculties 441
legal system 438
see also European Union
litigation
private, regulation by, USA 67–8
locus standi
access to justice or, administrative law 26
loss
nationality, of, grounds for in
comparative perspective 489–90
pure economic, damages and 237–9
sorts of, damages and 236–7
Lugano Convention 1988 131
see also Conventions
Lupoi, M. 756–7, 757–8, 760
Luxembourg
offer and acceptance inter absentes 499, 512–13
see also European Union
Maastricht Treaty see Treaty on European Union
MacCormick, D. Neil 408
Magnus, U. 236, 237
‘mailbox rule’ theory
offer and acceptance inter absentes 513–14
mandate
contract of, agency and
representation and 35–6, 37, 38
market
insurance, foreign 322
structure, differences in, insolvency law 294
Mattei, Ugo 161, 164, 165, 166, 388
Max Planck Institut 315, 403, 714
McIntosh, David 239
Mead, Philip 240
measure of enrichment
unjustified enrichment and 779–80
medical malpractice
accident compensation and 11–12
merger control
EC and US competition law compared 175
Merrill, Th.W. 594
Merry, Sally E. 374–5
methodology
administrative law 20–22
comparative law
limits 450–51
methods 443–6
phases 446–9
problems 451–2
research, nature of 449–50
terminology 442–3
test for success 451
comparative public law, specificity of 607–8
criminal law 218–21
private international law
American methodological revolution 567–8
European conflict of law principles, functional nature of 569–70
European contemporary theory, inadequacies of 570
interactions and continuity in borrowing 567
limited novelty 568–9
see also research
Mexico
offer and acceptance inter absentes 508
trust law 758
see also Latin America
Miller, Soul 777
Mirabeau, Octave 399
mistake
civil law and 455
classification of 456–7
consent negated by 458–60
consent nullified by 460–64
contractual liability and, basis of 457–8
convergent tendencies 464–5
defined 455
transfer of movable property and 731
mixed jurisdictions
Anglo-American procedure and evidence and 473–4
characteristic features 467–8
common law penetration 471–2
judicial institutions 469–70
jurists on, divisions between 469
precedent and 471
linguistic factor 470–71
original law, creation of 472–3
reasoning and 471
Sources of law 467
System, founding of 468–9
Term 467
Trust law and 758
Unjust enrichment and 768
Mobility
Interjurisdictional competition and, private international law 572–3
Moffat, G. 763
Monetary relief see damages
Montesquieu, Charles-Louis de Secondat 259, 267, 603
Montevideo Conventions
Nationality of Women 1933, on 479
Nationality 1933, on 479, 483
see also Conventions
Montevideo Treaty on International Commercial Law 1889 300
Müller-Freienfels, W. 36–7, 259, 260, 263
NAFTA see North American Free Trade Agreement
Name
Trade name, as, personality rights 543
National law see domestic law
Nationality law
European community 482–3
Function and definition 476
Nationality
Acquisition ex lege, grounds for 484–6
Human right, as 483
International law with regard to, general principles 481–2
Loss of, grounds for in comparative perspective 489–90
Multiple 483–4
States’ autonomy in matters of 478 term 476–7
Naturalization 487–9
Option rights 486–7
Statelessness 484
Treaties 478–81
see also European Convention on Nationality; human rights
Natural law
History and 397–8
Naturalization
Nationality law and 487–9
Negligence
Tortious liability and 725
see also Contributory negligence
Negotiations
Parol evidence rule and 341–2
Negotiorum gestio
Unjustified enrichment and 778
Netherlands
Accident compensation 12
Agency and representation 36, 42, 43, 45, 46
Breach of contract, remedies for 618, 623
Civil and commercial law 494–5
Civil code 247, 248
Civil procedure 120, 121, 123, 125
Constitutional law 188, 493–4
Court system 495–6
Culture 373, 378
Damages in tort 235
Family law 266
History 398, 399, 405
Interpretation of contracts 329, 332, 336, 339
Languages 493
Law faculties 496
Legal system 493
Nationality law 476
Personality rights 541, 545
Private international law 568
Property rights and real rights 592, 597, 599, 600
Real security 519, 521, 522, 526, 527
Russian law, influence on 637
Social security 658
Transfer of movable property 731, 733, 736
Trust law 759, 760
Unjustified enrichment 770, 772, 774, 778
see also Civil Code (Netherlands); European Union
New Guinea
Comparative law and economics and 168
New York Conventions
Nationality of Married Women 1957, on the 479
Recognition and Enforcement of Foreign Arbitral Awards, on see UN Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958
Reduction of Statelessness 1961, on the 480, 484
Relating to the Status of Stateless Persons 1954 479
see also Conventions
New Zealand
accident compensation 11
family law 266–7
interpretation of contracts 342, 343, 344
nationality law 485
privacy law 556–7
product liability 584
statutory interpretation 683
see also Commonwealth
Nicolls, Lord 154
Nordic Bankruptcy Convention 300
see also Conventions
Nordic law
accident compensation and 5
agency and representation and 36, 37, 46
family law and 263, 268
private law and 699
see also Scandinavia
North America see United States of America
North American Free Trade Agreement (NAFTA) 300–301
Norway
family law 265–6
product liability 584
see also Nordic law; Scandinavia
numerus clausus
property rights and real rights and principle, meaning and presence of 593–5
recognized number of property rights 595–7
Typenfixierung (flexibility in content of real rights) 598–600
Typenzwang (additions of new real rights) 597–8
Nussbaum, Arthur 512
OAS see Organization of American States
obligations see duties
OECD see Organization for Economic Cooperation and Development
offer and acceptance inter absentes acceptance
counter-offer and 509
late 510–11
time limit 510
agreement of parties
consensual and real contracts
497–500
consent 501–3
definitions of 500–501
concepts 497
contract concluded, moment that 511, 514–5
‘expedition’ or ‘mailbox rule’
theory 513–14
‘information’ theory 511–12
‘reception’ theory 512–13
offer
agreement inter praesentes 505–6
invitation to make offer and 507
public, to 506–7
revocable and irrevocable 507–9
silence to under Swiss law 504–5
see also contract
OHADA see Organisation pour l’Harmonisation en Afrique du Droit des Affaires
Open Method of Co-ordination 662
option rights
nationality law 486–7
see also rights
Organisation pour l’Harmonisation en Afrique du Droit des Affaires (OHADA) 301, 523
Organization for Economic Cooperation and Development (OECD) 714
Organization of American States (OAS) 522, 607
organs see institutions
original law
creation of, mixed jurisdictions 472–3
Örüçü, Esin 390
ownership
security, as, real security 520–22, 525
Index 809

Palmer, Vernon Valentine 390
Panama
trust law 758
see also Latin America
Panama Convention see Inter-American Convention on International Commercial Arbitration 1975
Paris Congress of Comparative Law 1900 259, 442, 603
Paris Convention on the Exchange of Information Regarding Acquisition of Nationality 1964 480
see also Conventions
parol evidence rule
interpretation of contracts and admittance of extrinsic evidence in respect of 339–40
better law 339
cardinal prohibition of, negotiations and subsequent conduct of parties 341–2
differences and resemblances between Art 1341 C.civ and 338–9
exceptions to 337–8
Romanistic rule of no witnesses against and beyond written contract and 336–7
parties
agreement of, offer and acceptance inter absentes
consensual and real contracts 497–500
consent 501–4
definitions of 500–501
liability of, product liability 581
more than two, enrichment problems in situations involving 778–9
subsequent conduct of, parol evidence rule and 341–2
patrimonial rights
personality rights and 541
author’s personality right 542
breach of contract or damage to property and personality harm 543–4
creditworthiness and earning capacity 542–3
name as trade name right 543
publicity or advertising (market) value of personality interests right 543
see also personality rights
PCIJ see Permanent Court of International Justice
PECL see Principles of European Contract Law
performance
developer, by, assignee’s rights to 91
see also specific performance
periodicals see publications
Permanent Court of International Justice (PCIJ) 478, 603
see also courts
personal injury
accident compensation and 3
damages and 239
personal security
background 517
examples, harmonization and human rights 520
relevant principles 524, 526
terminology 517–19
see also real security
personality rights
general right 531–2
human rights, as 544
juridic persons, of 545
nature of, personality harm and 534–5
particular 531–2, 536
dignity 538–9
identity 540–41
life 536
other than 541
physical liberty 538
physical-psychological integrity 536–8
privacy 541
reputation 539–40
patrimonial rights and 541
author’s personality right 542
breach of contract or damage to property and personality harm 543–4
creditworthiness and earning capacity 542–3
name as trade name right 543
publicity or advertising (market)
value of personality interests
right 543
protection of
post-mortem 544–5
recognition and basis 530–31
scope 532–4
see also human rights; privacy
Peru
c omparative law and economics and
168
see also Latin America
Philippines
mixed jurisdictions 473
see also South-East Asia
physical liberty
personality rights 538
physical-psychological integrity
personality rights 536–8
PICC see Principles of International
Commercial Contracts 1994
Pieters, D. 663
plain meaning doctrine
interpretation of contracts and 330
statutory interpretation and 684–5
plurality of laws
EU and USA compared 70
Russia 663–4
Poland
civil law 549–51
civil procedure 127
commercial law 551
constitutional law 190, 548–9
court system 551
law faculties 551–2
legal system 548
see also European Union
political law
classification of legal families and
388
politics
administrative law and 19
family law and 264–70
German unification 274–5
law and, USA 66–7
legal style and, USA 71–2
see also public policy
Pollock, Sir Frederick 182
Porter, Michael 203
Portugal
constitutional law 192
offer and acceptance inter absentes
504
see also European Union
powers
arbitral tribunal 87
see also separation of powers
practitioners
common law 149, 150
Germany 279–80
Japan 366–9
Scotland 644–5
tax law 713–14
precedent
common law and 150–51
mixed jurisdictions and 471
reasoning and 414–16
Principles for a Global Approach to
Multi-Creditor Workouts 304
Principles of European Contract Law
(PECL)
agency and representation and 50,
52
assignment and 93, 94, 97, 101, 103
breach of contract and, remedies for
convergence 611, 626
damages 623, 624
penalty clauses and exemption
clauses 625
specific performance, claims for
620–21, 627
termination of contract and
restitution 615, 616
European Civil Code and 250–51, 255
force majeure and supervening
events and
avoidance of contract 691
concepts 689, 690
foreseeable events 695
notions of superening events 692
self-induced events 696
interpretation of contracts and 334,
336, 339, 342
mistake and 465
principle-based jurisprudence and,
German law 282
property and real rights and 591
Scotland and 649
unjustified enrichment and 776
see also contract
Principles of European Tort Law 5, 250, 255, 689
Principles of International Commercial Contracts 1994 (PICC)
breach of contract and, remedies for convergence 611, 626
damages 623, 624
penalty clauses and exemption clauses 625
specific performance, claims for 620–21, 627
termination of contract and restitution 615, 616
force majeure and supervening events and concepts 689, 690
foreseeable events 695
notions of supervening events 693
specific performance, bar to 691
interpretation of contracts and 329, 334, 336, 339, 342
mistake and 465
Scotland and 649
see also commercial law; contract; UNIDROIT
Principles of International Trust Law 760–61
privacy
Canada 558–60
common law jurisdiction other than England and Wales 556–7
English common law 554–6
French law 560–62
German law 563–5
United States 557–8
see also human rights
private international law
comparative law and, points of contact between 566–7
competitive paradigm, emerging comparative law and 571–2
contract and arbitration and 573–4
globalization impact on relationships between legal systems 570–71
interjurisdictional competition, mobility as factor of 572–3
family law and 263
methodology and nature of
American methodological revolution 567–8
European conflict of law principles, functional nature of 569–70
European contemporary theory, inadequacies of 570
interactions and continuity in borrowing 567
limited novelty 568–9
structural and axiological difference 574–6
see also conflict of laws
private law
administrative law and distinguished, South Africa 667–8
shifting boundaries between 605–6
comparative, development of 18
convergence
advantages 211–12, 212–13
conflict of laws rules 210–11
default rules 212
distributional consequences 208
issues 208–9
legal rules, functions of 208
differences, insolvency law and 294–5
European, European Civil Code and 250–51, 253
family law as 269–70
Germany 281–3
Nordic law and 699
Scotland 642–3, 647, 649–50
South Africa 669
Spain 672, 675
unjustified enrichment and 776–8
problem-solving approach methodology 443–4
procedure
Anglo-American, mixed jurisdictions and 473–4
civil see civil procedure
criminal 221, 223–5
oral evidence, interpretation of contracts and 341
proceedings arbitration 87
product liability
alternatives 584
background 578
causation 584–5
defects, categories of 580–81
defectiveness 582–3
development risks 583
general context 584
parties, of 581
relationship with other heads of liability 581–2
strict 578–80
professional law
classification of legal families and 388
prohibition
assignment, contractual 98–101
cardinal, parol evidence rule 341–2
property
damage to
accident compensation and 4, 8
personality harm and 543–4
movable, transfer of see transfer of movable property
unjustified enrichment and 776
property rights
objects of 591–3
real rights and 587–8
common law and civil law 588–9
numerus clausus 593–600
original acquisition 593
uniformity, towards 589–91
see also rights
Prosser, William 557
public
offer to 506–7
public law see administrative law
public policy
private international law and 575–6
see also politics
publications
insurance law 315
reasoning 408
social security law 660–61, 663–4
statutory interpretation 677
tax law 709, 711–13
see also research
publicity principle
agency and representation 46–7
Puerto Rico
foreign law influences 73
mixed jurisdictions 473
see also Latin America
Puget, Henry 603
Rabel, Ernst 284
race
classification of legal families and 385
ratification
agency and representation 44–5
ratio decidendi
common law and 151–2
see also reasoning
real security
background 517
ownership as security 520–22, 525
rights
abstract 526–7
limited real 522, 525–6
towards 522–4
terminology 517–19
see also personal security
reasoning
approaches to studying 407–9
books 408
common law and 151–2
France 416–17
Germany 417–18
legal systems and 420–21
mixed jurisdictions and 471
precedents 414–16
reasons, different kinds distinguished 409
rule-based 412–14
‘rules’, two kinds of 411–12
substantive and formal 409–10
United Kingdom 418–19
United States of America 419–20
see also interpretation
reasons
different kinds distinguished 409
‘reception’ theory
offer and acceptance inter absentes 512–13
regulation
arbitration and 81
commercial see commercial regulation
Index 813

consumer protection 205
insolvency law 298–9
Central Africa 301
Europe 301–2
Latin America 300
North America 300–301
Northern Europe 300
regional 299
South-East Asia 302
private litigation, by, USA 67–8
see also control
Reid, Kenneth G.C. 472
remedies
personality rights 533
common law and 154
judicial, administrative law 27
see also accident compensation; damages
reputation
personality rights 539–40
research
accident compensation 12–13
administrative law, comparative objectives 21–2
commercial regulation 142
culture 376–8
Germany 274, 282–3
history 403
nature of 449–50
property rights and real rights 591
social security law 657–9, 664
statutory interpretation 678–9
tax law
language and 710
teaching and 714
unjustified enrichment 768–9
see also education; methodology; publications
Restatements see American Law Institute
restitution
termination of contract and 612–17, 625–6
see also unjustified enrichment
Reynolds, F.M.B. 48–9, 50
Riddall, J.G. 761
rights
assignee’s, to performance by debtor 91
common law and 154
option, nationality law 486–7
patrimonial 541–4
real security 522–7
see also human rights; personality rights; property rights
risks
accident compensation and 1–2
development, product liability 583
insurance law and 312–13
tortious liability and 725–6
Rodger, Lord 645
role of law
consumer protection, in 200–202
Japan 369–70
Russia 630–31
USA 66–8
Roman law
agency and representation and 33
breach of contract and, remedies for 617
common law and 145, 150, 154–5
comparative law and 57
Germany and 273–4
history, comparative law and codifications 398, 399
concept 393
development of discipline 400–401
position on continent and in Great Britain 394, 395, 396
purists 404
interpretation of contracts and 326, 336–7
mistake and 455
natural law and 397
Nordic law and 699
offer and acceptance inter absentes 498, 505
personality rights and 535
statutory interpretation and 681
tort law and 723
transfer of movable property and 732
trust law and 756
unjustified enrichment and 769–80, 774, 779
Romania
family law 264
Rome Convention on the Law Applicable to Contractual Obligations 92, 573
see also Conventions
Rudden, B. 757
rule of law
administrative law and 19–20, 23, 25
Germany 280–81
Japan 369–70
rules
civil procedure, classification of
120–21
competition, international 177–8
conflict of laws, coordination of
legal systems and 210–11
default, coordination of legal
systems and 212
legal
competitive model 161–4
functions of, coordination of legal
systems and 208
Lord Hoffmann’s, interpretation of
contracts and 331
parol evidence, interpretation of
contracts and 336–42
reasoning and 411–14
Romanistic, no witnesses against
and beyond written contract,
interpretation of contracts and
336–7
statutory interpretation 682–3
suppletive, interpretation of
contracts and 326–8
Russia
comparative law in 639–40
Dutch Civil Code and 493
family law 264, 267
history 396
role of law in 630–31
law
defined 630
federation and legal plurality 633–4
legal doctrine 635–6
legal institutions 634
legal style 635
other legal systems and 636–9
sources of law 631–3
Sacco, Rodolfo 58
Sarcevic, Susan 427
Scandinavia
accident compensation 9, 11
breach of contract and, remedies for
622
criminal law and procedure 215
family law 260, 261, 265, 268, 269
see also Denmark; Nordic law;
Norway; Sweden
scholarship see education; research
Scholten, 398
Schwarze, Jürgen 20–21
science
evolutionary and taxonomic,
comparative law as instrument
of 59–60
legal, absence of, common law 158–9
pandectism and, Germany 274
practice and, German law 282–3
Scotland
civil law 645–6
codification proposals 648–9
commercial law 643, 647
constitutional law 243
court system 646–7
delict 643–4
European Union and 645, 648,
649–50
human rights and 648
interpretation of contracts 341–2
languages 644
law faculties 645
law reform 647–8
legal system 642–3
mixed jurisdictions and 468, 473
practitioners 644–5
private law 642–3, 647, 649–50
property rights and real rights and
589, 592, 596, 600
Russian law, influence on 637
trust law and 758, 763
unjustified enrichment and 770
see also England and Wales;
European Union
security see personal security; real
security; social security
self-induced events
supervening events and 695–6
separation of powers
concept 187–8
USA 70–71, 188
see also powers
silence
consent and, offer and acceptance
inter absentes 503–4
offer and, under Swiss law 504–5
Index

Singapore
  interpretation of contracts 336
  see also South-East Asia
Smith, H.E. 594
Smith, Sir Thomas 646, 650
social security
  accident compensation and 3, 4–5
  comparative law, academic approaches to 657–9
  comparative studies, importance and need for 664
  Council of Europe and 660
  forms of, development of 654–6
history 653
law
  European Union 661–2, 663–4
  supranational sources 659–60
publications
  Council of Europe 660–61
  EU law 663–4
  ILO 660
  scope of 653–4, 656
  systems, comparison for policy reasons 656–7
tort law and, relationship with 722
sociology of law
  administrative law and 25
  legal culture in 372–3
soft law
  insolvency 303
sources of law
  arbitration 80–83
  assignment 92–4
  Japan 362–3
  mixed jurisdictions 467
  Russia 631–3
  supranational, social security 659–60
  USA 68–9
South Africa
  administrative law and private law distinguished 667–8
  agency and representation 51
  civil procedure 123
  commercial law 669
  constitutional law 668–9
  court system 670
  interpretation of contracts 341, 344
  languages 667
  law faculties 670
legal system 667
  legal transplants 436–7
  mixed jurisdictions 473
  nationality law 485
  personality rights 530, 532, 533, 539, 542
private law 669
property rights and real rights 589, 593, 594, 599
statutory interpretation 677
trust law 758, 762, 763
unjustified enrichment 770
  see also Commonwealth
South-East Asia
  administrative law 605
  insolvency law 302
  legal families and 389
  Russian law influence on 638
  see also China; Hong Kong; Japan; Philippines; Singapore; Thailand; Vietnam
sovereignty
  concept 188
Spain
  agency and representation 53
  breach of contract, remedies for 618
  civil law 674–5
  commercial law 675
  constitutional law 672–4
  court system 675–6
  family law 264, 265, 270
  history 398
  interpretation of contracts 328, 344
  languages 672
  law faculties 676
  legal system 672
  nationality law 486
  offer and acceptance inter absentes 498
  unjustified enrichment 770
  see also European Union
specific performance
  bar to, force majeure and
  supervening events as 691
  claims for 617–21, 626
  see also performance
specification
  property rights and real rights and 593
Sri Lanka
  unjustified enrichment 770
  see also Commonwealth
state subsidies
  EC and US competition law compared 176
statelessness
  nationality law 484
states
  autonomy, nationality matters and 478
statutes
  Germany 275–6
  insurance contract, divergence 320–21
  sources of law, as, USA 69
statutory interpretation
  authority to interpret 681–2
  common law and 152–3
  comparative law, place in 678
  comparative scholarship on 678–9
  concept 677
  human rights and 153
importance of 677
interpretation
  defined 677
  lawmaking and 685–6
  object of 686
interpretation of contracts
  compared 325–6
interpretative criteria 683–5
legal style and, USA 71
other forms of legal interpretation
  and 679–81
rules 682–3
  see also interpretation
Storme, Marcel 129, 130
Story, Justice 746
Strasbourg Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality 1963 480, 483, 484
  see also Conventions
style
  classification of legal families and 387
  Russia 635
  US law 71–2
subsidiarity
  unjustified enrichment and 771–2
subsidies
  state, EC and US competition law compared 176
Summers, Robert S. 408, 419–20
supervening events
  cases 693–4, 696–7
  concept 689
  effects of, limits to 694
  contractual provisions to contrary 694–5
foreseeable events 695
self-induced events 695–6
functions 689
  avoidance of contract 690–91
  specific performance, bar to 691
notions 682–3
supreme court
  control of, interpretation of contracts and 334–5
  see also court systems
Supreme Court (Germany) 597–8
  see also courts
Supreme Court (USA) 189, 192
  see also courts
Sweden
  accident compensation 9
  civil and commercial law 700
  constitutional law 192, 700
  consumer protection 699
  court system 700–701
  family law 261, 265, 266, 269
  interpretation of contracts 329, 344
  languages 700
  law faculties 701
  legal system 699
  product liability 584
  tort law 727
  see also European Union
Switzerland
  agency and representation 45–6, 53
  arbitration 78
  assignment 97, 100–101, 102
  breach of contract, remedies for 617, 623, 625
  civil law 704–5
  commercial law 705
  constitutional law 702–4
  court system 705–6
  family law 260
  languages 702, 703
lack faculties 706
legal system 702
legal transplants 268
offer and acceptance inter absentes agreement inter praeentes 505, 506
consensual and real contracts 498, 499, 500
express and implied consent 501
offer and invitation to make an offer 507
silence to offer 504–5
personality rights
identity 540
know own descent or heritage 541
name as trade name 543
nature of, personality harm and 535
physical-psychological integrity 537
post-mortem 544–5
real security 526
statutory interpretation 677
tax law
Cahiers du droit fiscal international 711–12
comparative knowledge, demand for 709
comparative law, as 715
convergence and 710
descriptive material 713
general books on 712
international organizations 714
international tax law distinguished 710
literature 709
periodicals 713
practitioners 713–14
research
language and 710
teaching and 714
specific studies 713
tax, as interdisciplinary field 709–10
World Tax Series 711
taxonomy see classification
TCE see Treaty Establishing a Constitution for Europe
teaching see education
terminology
administrative law 608
civil procedure 120
common law 145
comparative law 63, 442–3
constitutional law 187–8
culture 372
insurance law 312–13
legal culture 372
methodology 442–3
mixed jurisdictions 467
nationality 476–7
offer and acceptance inter absentes 497–500
personal and real security 517–19
see also definitions; languages
terrorism
accident compensation and 11
test
success, for, methodology 451
Thailand
commercial regulation 136
see also South-East Asia
Thuronyi, Victor 712
time
contract concluded, offer and acceptance inter absentes 511, 514–5
‘expedition’ or ‘mailbox rule’ theory 513–14
‘information’ theory 511–12
‘reception’ theory 512–13
late acceptance inter absentes 510–11
time limit
acceptance inter absentes 510
TL see transnational law
tort law
accident compensation and 3–4, 5–7
aims 719–20
common law and 156
defined 719
functions 720–21
history 722–3
interests 721
liability 723–4
causation 724
conduct of others, for 726–7
contributory negligence 727
damage 725
defences 727
negligence 725
protected interests 724
strict 725–6
personality rights and 532–3
social and private insurance law, relationship with 722
unjustified enrichment and 777
see also damages; delict; privacy
traditional law see customary law
transaction costs
competitive model of legal rules and 163, 164
transfer of movable property
abstract system
causal system distinguished 730
practical differences between causal system and 731–2
causal system
abstract system distinguished 730
described 730
practical differences between abstract system and 731–2
consensual system
described 730
tradition system distinguished 730–31
Dutch system 736
English system 735–6
French system 734–5
German system 733–4
insolvency, importance in 732–3
see also property
translation
comparative law, core issue for 423–4
bilingual legal dictionaries, consequences for 429–30
equivalents 424–5
subsidiary solutions 425–9
see also languages
transnational law
concept 738–40
corporations 742–3
education 748–50
history and societal memory 748
human rights litigation 746–7
lex mercatoria 740–42
public (international) law 743–5
see also international law
treaties
nationality law 478–81
see also Conventions
Treaty Establishing a Constitution for Europe (TCE) 187, 191, 196–8, 254
Treaty of Rome 1957
administrative law and 22
civil procedure and 129
competition and 172, 173–4, 176
constitutional law and 194
history and comparative law and 401, 402
property and real rights and 590
rule of law and, Germany 280
social security and 661–2
see also European Union
Treaty on European Union (Maastricht Treaty) 193, 195
Treitel, G.H. 611
tribunal
arbitration 85–7
see also courts
trust law
challenges and trends in 763–4
competitive model of legal rules and 162
trust
basic elements 761–3
civil law and mixed jurisdictions, in 757–8
defined 755
unique institution of common law, as 756–7
trust-like institutions in continental Europe 759–61
Tune, André 5, 9
Turkey
interpretation of contracts 335
legal transplants 268
UCC see Uniform Commercial Code
UG see Ultimatum Game
Ulpian 402
Ultimatum Game (UG) 167–9
see also culture
UN see United Nations
UN Convention on Contracts for the International Sale of Goods (CISG)
breach of contract and, remedies for convergence 611, 626
damages 623–4
penalty clauses and exemption clauses 625
specific performance, claims for 620, 626, 627
termination of contract and restitution 615
force majeure and supervening events and 695, 696
interpretation of contracts and admissibility of extrinsic evidence doctrine, interpretation doctrine and 336
parol evidence rule 339, 342
statutory precepts 329
strict sense 333–4
wider sense 344
offer and acceptance inter absentes and acceptance and counter-offer 509
agreement of parties, definitions 501
‘expedition’ or ‘mailbox rule’ theory 514
late acceptance 510
offer to public 506
reception theory 513, 515 revocable and irrevocable offer 508
silent consent 502
Scotland and 649
Sweden and 700
see also Conventions
UN Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)
arbitrability 83
arbitration agreement 84–5 arbitration award 88
arbitration cases, national and international distinguished 78
sources of law, as 81, 82
use and advantages of arbitration and 80
see also Conventions
UN Convention on the Assignment of Receivables in International Trade 2001 590
see also Conventions
UNCITRAL (United Nations Commission on International Trade Law)
Arbitration Rules 79
Convention on the Assignment of Receivables in International Trade 2001 93, 97, 102
draft legislative guide on secured transactions 522, 590
insolvency law and 304–5
Model Law on Cross-Border Insolvency 1997 304, 590
Model Law on International Commercial Arbitration 1985 agreement 84–5 arbitrarability 83
award 88
courts’ role 88–9
national and international cases distinguished 78
national laws, development and harmonization of 79–80
sources of law, as 82
tribunal 85–6, 87
undisclosed principal doctrine
agency and representation 48–50
civilian counterparts of 51–4
election and merger 50–51
UNIDROIT (United Nations International Institute for the Unification of Private Law)
civil procedure and 125, 130
Convention on International Factoring 1988 assignment and 92–3, 97, 100, 101, 102
property and real rights and 590
Convention on International Financial Leasing 1988 590
Convention on International Interests in Mobile Equipment 2001 522, 590
Convention on Stolen or Illegally Exported Cultural Objects 1995 590
Principles of International Commercial Contracts 1994 (PICC) see Principles of International Commercial Contracts
Principles of International Commercial Contracts 2004 (UP) 93–4, 97, 103
Uniform Commercial Code (UCC) assignment and 94–5, 99, 101–2
breach of contract and, remedies for 615, 620
consideration and 183, 184, 185
influences on foreign law and 73
interpretation of contracts and 328, 336
offer and acceptance inter absentes 509
personal and real security and 522, 523–4, 526
sources of law and 69
see also United States of America
United Kingdom see England and Wales; Scotland
United Nations (UN) 519, 659 see also UN Convention; UNCITRAL; UNIDROIT
United States of America accident compensation 10, 11
administrative law
administrative justice 24, 25
comparative, contribution to legal families, legal transplants and legal cultures 604, 605
different branches 605
judicial review 27
national legal systems, supranational and international legal systems compared 606–7
private law and 605
agency and representation 35, 36, 38–9, 43
arbitration 85, 86
antitrust law 172–3
breach of contract, remedies for 619–20, 626
civil codes and 250, 251
civil procedure 121, 122, 124, 126
commercial regulation 139, 141
comparative law and economics 161, 165
comparative law in 75
consideration 182–3
constitutional law concept 189
constitutional law compared 190
judicial review 191–2, 193
separation of powers 70–71, 188
criminal law and procedure 215
culture 373, 377
family law 261, 266
human rights litigation and transnational law 747
insolvency law comparative 295
convergence 303, 304
principles 297
regulation, forms of 299, 200–301
insurance law 322, 322–3
interpretation of contracts 331, 337, 339
law
federal system and plurality of law 69–70
foreign law influences on 73
influences on foreign law 73–4
international law and 74–5
legal actors 70–71
legal style 71–2
legal thought 72–73
sources of law 68–9
mistake 455, 457–8, 463–4
mixed jurisdictions 473
nationality law 477, 485
offer and acceptance inter absentes 504, 506–7
personality rights 540, 542, 543, 558
privacy law 557–8
private international law 567–8, 569, 572, 573
product liability 578–9
defects, categories of 581
defectiveness 582
development risks 583
legal context 584
reform and policy articulation 580
property rights and real rights 594, 595
real security 522, 523–4, 526
reasoning 419–20
role of law in 66–8
Russian law, influence on 637
social security 3
statutory interpretation 677, 680–81, 686
supervening events 697
tax law 711
tort law 7, 720, 721
trust law 758
see also American Law Institute; common law; Uniform Commercial Code
Universal Declaration of Human Rights 483, 653, 659
unjustified enrichment
comparative studies, overview of recent 768–9
enrichment
administrative law and 778
liability, core elements 772–3
measure of 779–80
private law and 776–8
problems, situations involving more than two parties 778–9
generalizing tendencies 769–71
legal systems and 767–8
subsidiarity 771–2
taxonomic variations 773–6
see also restitution
UP see UNIDROIT, Principles of International Commercial Contracts 2004
Uzbekistan
offer and acceptance inter absentes 503
van Gerven, W. 236, 237
Vanderlinden, Jacques 59, 388
vicarious liability
agency and representation 35
tortious 726–7
see also liability
victim compensation funds
accident compensation and 8
international crime, for 4
Vienna Conventions
Consular Relations 1963, on 479
Diplomatic Relations 1961, on 479
see also Conventions
Vietnam
interpretation of contracts 328, 340
see also South-East Asia
Vogenauer, Stefan 408
von Bar, Christian, 237, 238
Watson, Alan 261–2, 267, 268
Weston, Martin 425, 426
Wood, Philip R. 296
World Bank 305, 571–2, 637, 714
World Congress of Comparative Law 1900 58
World Trade Organization 23, 27, 178
Yugoslavia
family law 264
Zimmermann, R. 401–2
Zweigert, Konrad 261, 263, 387