

COMPARATIVE CONTRACT LAW – Fall 2002

George Mason University School of Law

Course Syllabus (Revised 7/31/02)

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Course Description

This course compares American contract law with the law of contract of France, Germany, the Netherlands and some other European countries. Special attention will be paid to the *Principles of European Contract Law* (Lando e.a., 2000), a 'restatement' of the emerging European contract law.

It will be shown that, quite often, legal systems obtain similar results through different concepts and doctrines. In some cases, however, differences are more substantial. In these cases, we will try to get a deeper understanding of the differences by analyzing the effect of these rules on the parties' incentives and on the allocation of contract risks.

Schedule

Class meets on Mondays and Tuesdays at 2.00-3.50 p.m. (first 7 weeks of Fall semester) in Room 348.

Course Materials

Required: Beale, Hugh et al (eds.), *Cases, Materials and Text on Contract Law*, Hart Publishing (US distributor: www.isbs.com), 2002.

Optional: O. Lando en H. Beale (ed.), *Principles of European Contract Law, Part I and II*, Kluwer Law International, Den Haag, 2000.

Handouts and additional materials will be distributed before each lecture.

Written Requirement

One of the following – a short paper (10-15 p.) or 3 case notes (3 x 4 p.). One constraint is that each student works on a different topic. Therefore, your subject needs prior approval. Mail to: gerrit.degeest@pi.be. The final deadline for all papers and case notes is October 7th. Students who submit earlier get feedback within 7 days and have the right to submit a second version before the final deadline.

Short paper. Quite often, legal systems obtain similar results through different concepts and doctrines. In some cases, however, differences are more substantial. You have the choice between discussing (a) a substantial difference or (b) a technical difference.

(a) Try to find a *substantial* difference between countries with respect to contract law. By ‘substantial’ it is meant that the final outcome differs (for instance, a clause is forbidden in one country but allowed in another). Next, determine what outcome is the best, using economic or philosophical (e.g. fairness) arguments.

(b) Try to find a purely *technical* difference between countries with respect to contract law. By ‘technical’ it is meant that the final outcome is the same. Next, determine which solution is the best from a technical viewpoint (‘best’ means: as precise as possible, as brief as possible, as simple as possible). For that purpose, you also have to take a look at how rules on that subject are drafted by the Lando Commission (see <http://www.ufsia.ac.be/~estorme/PECL2en.html>), in the Restatement (Second) of Contracts and/or in the Uniform Commercial Code (USA). (You may also consider the United Nations Convention on the International Sale of Goods (CISG) or the Principles for International Commercial Contracts (PICC: Unidroit)).

3 case notes. Choose 3 (non-English) cases in Beales et al., not yet discussed in class. Summarize in ½ page. Explain the incentive or transaction costs problems involved, and/or what risks are to be allocated. Discuss the solution chosen by the court. Compare with American law. Are there any substantial or technical differences?

Reading Assignments

Week I (Monday 19 - Tuesday 20 August) – Introduction. Comparative law

Readings: Beale et al. (2002), chapter one (pp. 1-176)

Topics: Legal science; Comparative law; Divergence and convergence; Law harmonization in Europe; Common law versus civil law; Typical features of English, German, French and Dutch law.
The notion of contract; Place and sources of contract law; Categories of contract; Specific peculiarities; Contract and tort; Contract and restitution; Intention to create legal relations; Cause and consideration; Formalism.

Week II (Monday 26 - Tuesday 27 August) – Contract formation

Readings: Beale et al. (2002), chapter two (pp. 177-294)

Topics: Offer and Acceptance.
Pre-contractual good faith.

Week III (Tuesday 3 September) – Validity I

Readings: Beale et al. (2002), chapter three, section 1-2 (pp. 295-429)

Topics: Immoral and illegal contracts.
Fraud, mistake and misrepresentation.

Week IV (Monday 9 - Tuesday 10 September) – Validity II

Readings: Beale et al. (2002), chapter three, section 3-4 (pp. 430-555)

Topics: Threats and abuse of circumstances.
Unfair clauses.

Week V (Monday 16 - Tuesday 17 September) – Interpretation and supervening events

Readings: Beale et al. (2002), chapters four and five (pp. 556-658)

Topics: Interpretation; Omitted terms.
Impossibility; Imprevision; Clauses dealing with supervening events.

Week VI (Monday 23 - Tuesday 24 September) – Remedies for non-performance

Readings: Beale et al. (2002), chapter six (pp. 659-878)

Topics: Fault and the nature of the debtor's obligation; Enforcement in natura;
Withholding performance; Termination; Damages.

Week VII (Monday 30 September - Tuesday 1 October) – Third party consequences

Readings: Beale et al. (2002), chapter seven (pp. 879-962)

Topics: Third party beneficiaries; Agency; Assignment.
Synthesis and discussion.

Week VIII (Monday 7 October) – Synthesis and discussion

Readings: -

Topics: Synthesis and discussion.