

Workshop Contract Law I

Ius Commune Conference 2014

Friday, 28 November (09.00 – 12.30)

Building: John McIntyre Centre

Room: Pentland East

Participants

Theme: Information and notification duties

Explanation of the general theme

Technological and economical evolutions necessitate contracting parties to be informed and advised. Informed about the characteristics of the services or the goods that we order. Well advised about our choices and possibilities. Informed about the remedies that are used against us. Well protected against the consequences of a lack of information or notification.

Information and notification duties can be found in different varieties. Traditionally they have been associated with doctrines such as mistake and misrepresentation and have been brought in relation with conformity issues. These duties to warn play an important role in various domains and especially in construction law, financial services, and tort law. More recently, information obligations have been introduced through (European) consumer law legislation, most recently on the basis of the implemented Consumer Rights Directive. These information obligations have also been included in the proposal for a Common European Sales Law (CESL).

The question whether or not parties may be under an information obligation, is much more controversial in commercial law. The most debated issue is whether or not standard terms are incorporated into the contract if they have not been provided to the other party before the contract was concluded. In this respect, the jurisprudence of the Austrian Oberster Gerichtshof contradicts the jurisprudence of the German Bundesgerichtshof with regard to the Vienna Sales Convention. The European Commission seems to follow an 'in-between' solution for B2B-contracts in the proposal for the CESL.

We will address in this workshop not only the information and notification obligations as such but also their (in)effectiveness. Information obligations may remedy market failures according to law & economics theories, but consumer behavioural studies frequently criticize information obligations for being ineffective.

- Chair:** **Prof.Dr. Ilse Samoy** (KU Leuven) and **Prof.Dr. Marco B.M. Loos** (University of Amsterdam)
- 09.00 – 09.20 **Sanne Jansen** (KU Leuven)
Notification, breach of contract, (partial) non-performance, remedies and defences: a complex relationship, a comparison between Belgian law and European legal instruments
- 09.20 – 09.40 **Sacha Tamboer** (University of Amsterdam)
Examination and notification duties in consumer sales law: the Dutch case: should the scope of Article 7:23 par. 1 BW exclude Consumer sales contracts?
- 09.40 – 10.00 **Johanna Waelkens** (KU Leuven)
Article 5 Unfair Terms Directive 93/13/EEC: transparency and interpretation in consumer contracts
- 10.00 – 10.30 Discussion
- 10.30 – 11.00 Coffee break
- 11.00 – 11.20 **Johan Vannerom** (KU Leuven)
The consumer's right of information: a 'reality check', on the boundaries of a duty to inform and a proposed regulatory reform
- 11.20 – 11.40 **Carien de Jager** (University of Groningen)
The effectiveness of information documents in protecting retail investors: what does behavioural finance tell us?
- 11.40 – 12.00 **Joasia Luzak** (University of Amsterdam)
'Making information available': a game changer for the scope of protection granted to passive consumers under the new disclosure rules of the Consumer Rights Directive
- 12.00 – 12.30 Discussion