European Contract Law: A Law-and-Economics Perspective

Friday and Saturday, April 27 and 28, 2012

Room V
University of Chicago Law School
1111 East 60th Street • Chicago, IL 60637

The movement to harmonize European contract law generated various proposals for uniform statutes and optional instruments, culminating in the recent Draft Common European Sales Law. This ambitious reform envisions a uniform Sales Law for Europe with strong consumer protections, enacted by every member nation. Transactors will be able to choose this law to govern their transaction in place of existing contract law.

The Chicago conference brings together a group of leading scholars from Europe and from the University of Chicago, to explore the law and economics perspectives of the proposed harmonization. Is such an optional statute a desirable regulatory tool? What economic goals might it serve? Are the protections enacted in it suitable? What can be learned from the American experience with uniform commercial laws?

Organized by Omri Ben-Shahar
Frank and Bernice J. Greenberg Professor of Law and Kearney Director, Institute for Law and Economics, University of Chicago
Friday, April 27
9:00 – 9:15  Opening Remarks
9:15 – 12:30  **Panel I: The Law and Economics of an Optional Instrument**
Chair: Lee Fennell, University of Chicago

Public Supply of Optional Standardized Consumer Contracts: A Rationale for the Common European Sales Law?
Thomas Ackermann, Ludwig-Maximilians University, Munich

Optional Law for Firms and Consumers: An Economic Analysis of Opting into the Common European Sales Law
Fernando Gomez, Pompeu Fabra University, Barcelona

The Common European Sales Law and Party Choice: When Will Parties Choose the Proposed CESL?
Jan Smits, Maastricht University

11:00 Break

What Can Be Wrong with an Option? The Proposal for an Optional Common European Sales Law
Horst Eidenmüller, Ludwig-Maximilians University, Munich

Identifying Legal Costs of the Operation of the Common European Sales Law: Legal Framework, Scope of the Uniform Law and National Judicial Evaluations
Simon Whittaker, Oxford University

12:30 – 1:45  **Panel II: A Law and Economics Critique of the CESL**
Chair: Chantal Mak, University of Amsterdam

Regulatory Techniques in Consumer Protection: A Critique of the Common European Sales Law
Oren Bar-Gill, New York University, and Omri Ben-Shahar, University of Chicago

Mistake under the Common European Sales Law
Ariel Porat, University of Chicago and Tel Aviv University

Buyers’ Remedies under the CESL: Rejection, Rescission, and the Seller’s Right to Cure
Gerhard Wagner, University of Bonn

3:45 Break

Saturday, April 28
9:00 – 12:00  **Panel III: Harmonization and Regulatory Competition**
Chair: Randal Picker, University of Chicago

Harmonization, Heterogeneity, and Regulation: Why the Common European Sales Law Should Be Scrapped
Richard Epstein, New York University, Hoover Institute, and University of Chicago

Costs and Benefits of an Optional European Sales Law (CESL)
Stefan Grundmann, Humboldt University, Berlin

10:30 Break

Harmonization, Preferences, and the Calculus of Consent in Commercial and Other Law
Saul Levmore, University of Chicago

The Questionable Basis of the Common European Sales Law: The Role of an Optional Instrument in Jurisdictional Competition
Eric Posner, University of Chicago

In Defence of CESL
Chantal Mak, University of Amsterdam

Lunch

1:00 – 2:30  **Panel IV: Precontractual Liability**
Chair: Omri Ben-Shahar, University of Chicago

Precontractual Disclosure Duties under the Common European Sales Law
Douglas Baird, University of Chicago

CESL and Precontractual Liability from a Status to a Transaction-Based Approach
Fabrizio Cafaggi, European University Institute, Florence