

# Regulatory Competition in Contract Law and Dispute Resolution

edited by

**Horst Eidenmüller**

Professor of Law at Ludwig-Maximilians-University of Munich  
and at Oxford University

Verlag C. H. Beck · Hart · Nomos  
2013

## Table of Contents

<b>Preface</b>		V
<b>Chapter 1</b>	<b>Regulatory Competition in Contract Law and Dispute Resolution</b>	
	<i>Horst Eidenmüller</i>	1
<b>Chapter 2</b>	<b>Clearings and Thickets: Intellectual Property Law and Growth Economics</b>	
	<i>Robert D. Cooter/Aaron S. Edlin</i>	11
	<b>Comment on Cooter/Edlin</b>	
	<i>Mathias Siems</i>	25
<b>Chapter 3</b>	<b>Make or Buy – A Public Market for Legal Transplants?</b>	
	<i>Ralf Michaels</i>	27
<b>Chapter 4</b>	<b>Private Lawdrafting, Intellectual Property, and Public Laws</b>	
	<i>Bruce H. Kobayashi/Larry E. Ribstein</i>	43
	<b>Comment on Kobayashi/Ribstein</b>	
	<i>Anne van Aaken</i>	66
<b>Chapter 5</b>	<b>Global Law's Toolbox: How Standards Form Contracts</b>	
	<i>Dan Wielsch</i>	71
	<b>Standard Form Contracts as Private Law Regimes</b>	
	<i>Axel Metzger</i>	112
	<b>Comment on Wielsch</b>	
	<i>Michael Klausner</i>	116
<b>Chapter 6</b>	<b>Regulatory Competition in International Trade: Transnational Regulation through Standard Form Contracts</b>	
	<i>Hugh Collins</i>	121
	<b>Private Production of Transnational Regulation through Standard Form Contracts</b>	
	<i>Thomas Ackermann</i>	142
	<b>Regulatory Competition between Public and Private Rules</b>	
	<i>Florian Möslin</i>	147
<b>Chapter 7</b>	<b>Contracting Employee Involvement: An Analysis of Bargaining over Employee Involvement Rules for a Societas Europaea</b>	
	<i>Horst Eidenmüller/Lars Hornuf/Markus Reps</i>	155
	<b>Contracting Co-Determination: The SE-Directive as a Model?</b>	
	<i>Gregor Bachmann/Heiko Richter</i>	187
<b>Chapter 8</b>	<b>Living Wills: A Prelude to Private Ordering Under Bankruptcy Law?</b>	
	<i>Adam Feibelman</i>	199
	<b>Can Living Will Regulations Revive Contractual Approaches to Bankruptcy?</b>	
	<i>Christoph Thole</i>	220
<b>Chapter 9</b>	<b>Regulatory Competition Through Choice of Contract Law and Choice of Forum in Europe: Theory and Evidence</b>	
	<i>Stefan Vogenauer</i>	227
	<b>Comment on Vogenauer</b>	
	<i>Michael Coester</i>	285

Table of Contents

<b>Chapter 10</b>	<b>The Choice of Law Framework for Efficient Regulatory Competition in Contract Law</b>	
	<i>Giesela Rühl</i> .....	287
	<b>Networks and Lemons in the Market for Contract Law</b>	
	<i>Andreas Engert</i> .....	304
<b>Chapter 11</b>	<b>Characteristics of Contract Laws and the European Optional Instrument</b>	
	<i>Hugh Beale</i> .....	313
	<b>The CESL as a European Brand – PayPalizing European Contract Law</b>	
	<i>Martin Engel/Johanna Stark</i> .....	337
<b>Chapter 12</b>	<b>Dispute Resolution as a Product: Competition between Civil Justice Systems</b>	
	<i>Gerhard Wagner</i> .....	347
	<b>Comment on Wagner</b>	
	<i>Dagmar Coester-Waltjen</i> .....	423
<b>Chapter 13</b>	<b>Jurisdictional Competition for Dispute Resolution: Courts versus Arbitration</b>	
	<i>Erin O'Hara O'Connor</i> .....	427
	<b>Comment on O'Hara O'Connor</b>	
	<i>Peter F. Schlosser</i> .....	442
<b>Chapter 14</b>	<b>Arbitration and Access to Courts: Economic Analysis</b>	
	<i>Omri Ben-Shahar</i> .....	447
<b>Chapter 15</b>	<b>The English vs. the American Rule on Attorney Fees: An Empirical Study of Public Company Contracts</b>	
	<i>Theodore Eisenberg/Geoffrey P. Miller</i> .....	471
	<b>Comment on Eisenberg/Miller</b>	
	<i>Lars Hornuf</i> .....	497
<b>List of Abbreviations</b>	.....	499
<b>Index</b>	.....	501