Legal Certainty in Real Estate Transactions A Comparison of England and France

Editors: Bertrand du Marais and David Marrani

Legal Certainty in Real Estate Transactions A Comparison of England and France





Ius Commune Europaeum

Intersentia Ltd Sheraton House | Castle Park Cambridge | CB3 0AX | United Kingdom Tel.: +44 1223 370 170 | Fax: +44 1223 370 169

Email: mail@intersentia.co.uk

www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland: NBN International Airport Business Centre, 10 Thornbury Road Plymouth, PL6 7 PP United Kingdom Tel.: +44 1752 202 301 | Fax: +44 1752 202 331

Distribution for Europe and all other countries: Intersentia Publishing nv Groenstraat 31 2640 Mortsel Belgium Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21

Tel.: +32 3 680 15 50 | Fax: +32 3 658 / Email: mail@intersentia.be

Email: orders@nbninternational.com

Distribution for the USA and Canada: International Specialized Book Services 920 NE 58th Ave. Suite 300 Portland, OR 97213

USA

Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832

Email: info@isbs.com

Legal Certainty in Real Estate Transactions: A Comparison of England and France © Bertrand du Marais and David Marrani (eds.) 2016

The author has asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as author of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Cover image: © 1xpert - Thinkstock

ISBN 978-1-78068-298-3 D/2016/7849/139 NUR 822

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

CONTENTS

INTRODUCTION

ransactions
9
21
23
le of law 25 - 26
of

Contents

B.	PRACTICAL APPROACH	37
	tractual Certainty under English Contract Law Youseph Farah	39
	Touseph Faran	39
1.	Theory of English Contract law that shapes legal certainty	
2.	The pre-contractual phase	
3.	Incomplete and vague agreements	
4.	The contractual terms phase	
	4.1. The parol evidence rule	
	4.2. Implication of terms	
	4.3. Classification of terms.4.4. Procedural v substantive fairness	
5.	Conclusion	
3.	Conclusion	44
	paring Company Law	
	Marios Koutsias	45
1.	Introduction	45
2.	The nature of the company in the UK: the company as a contract with	
	property rights in its centre	47
3.	Is it really that clear?	
4.	Is it a regular contract?	
5.	The directors within this framework: accountability in focus	
6.	Section 994 under the spotlight	
7.	The unfair prejudice question	
8.	The legitimate expectations question	
9.	Conclusion	65
PAR	T II. LEGAL CERTAINTY IN PROPERTY TRANSACTION:	
A CO	OMPARATIVE APPROACH	
How	to and Why Measure the Efficiency of Real Estate Transactions in France?	
	Camille Bourdaire-Mignot and Aurore Chaigneau	69
	c c	
1.	Ongoing criticism of the method's line of reasoning	
	1.1. First criterion: transaction times.	
2	1.2. Second criterion: the transaction cost	
2.	How can the impact of the law on economic practice be evaluated?	
	2.2. Changes of scale	
0		
	view of how a Real Estate Transaction is Conducted in France	
	Marie-France Nicolas-Maguin	
1.	Searching for the asset to acquire/selling an asset	77
2.	Negotiation	78

3.		ting of the pre-contract (provisional sales agreement)
4.		ing of the authentic deed
5.	The	transfer of ownership
Prop	erty'	Transactions in English Law: General Principles
•		Luther
1.	Owr	nership of land: historical introduction83
2.	Lega	l estates in land
3.	Crea	ting and transferring legal estates85
4.	Regi	stration of title
5.	Mor	tgages
Con	ımerc	ial Leases in English Law
		Moran
1.	The	role of the lawyer 95
2.		rview of the English commercial lease
3.		nalities for creation of a lease
4.		ecting the tenant
5.		nge of parties during the lease – enforceability of obligations
6.		ors outside the lease
7.		olems
8.		riding certainty
9. 10.		clusion
10.	Con	Eusion
PAR	T III.	MEASURING LEGAL CERTAINTY
Intr	oduct	ory Remarks on Legal Security: the Approach of French and
	pean	
		Sylvestre Bergé
1.	Lega	l security: a prescription tool
	1.1.	
		systems: the European example
	1.2.	0 1 1
		the example of France taken in the European context
	1.3.	1 11
2.	_	l security: a description tool
	2.1.	7
	2.2	certain degree of legal security
	2.2.	0 1
	2.3.	Legal security and legal comparison

Contents

An A	Assessment of Theoretical Proposals to Deal with Heterogeneous Small ples	
	Philippe Frouté	109
1.	Small area estimations techniques	110
	1.1. Methodological aspects.	110
	1.2. The ELL approach	
	1.3. Small area estimations and legal certainty	113
2.	Quantile regressions	
	2.1. Methodological aspects.	115
	2.2. Assessing behaviours' heterogeneity with quantile regression analysis	
	2.3. Quantile regressions and legal certainty	
3.	Conclusion: discussion of the two methodologies and further research	118
4.	References	120
CO	NCLUSION	
	nparative Law, "Economic Attractiveness of Law" and Legal Certainty: Some cluding Remarks from a Pilot Project	
	Bertrand du Marais	123
1.	What "(new comparative) economics" does to comparative law	124
2.	What economics could bring to comparative law: the "economic	
	attractiveness of law" approach and methodology	127
3.	What comparative law should do to economics: legal certainty and the	
4	"jurisdiversity" approach	129 131