

TABLE OF CONTENTS

List of contributors.....	xiii
List of abbreviations.....	xv
Chapter 1: Editorial introduction.....	1
Michael Faure and Frank Stephen	
1. Introduction.....	1
2. Contributors.....	1
3. Focus	2
4. Set-up.....	3
5. Regulation and contracts.....	4
6. Legal procedure and regulation of professions	6
7. Corporate and consumer regulation	8
8. Tort and insurance	9
9. Enforcement.....	10
10. Words of thanks	11
Bibliography Anthony I. Ogus	13
Part I Regulation and contracts	19
Chapter 2: Audit, regulation and constitutional modernization	21
Martin Loughlin	
1. Introduction.....	21
2. The Westminster Model of Government	22
3. The Westminster Model and the Administrative State.....	24
4. Constitutional modernization	27
5. Audit and accountability	29
6. Conclusions.....	31
Bibliography	33
Chapter 3: Contract law and the protection of reliance	37
Stephen Waddams	
Bibliography	46

Table of contents

Chapter 4: European private law and democracy: a misunderstood relationship	49
Jan Smits	
1. Introduction	49
2. Europeanization and private law: a democratic deficit?.....	49
3. Realising 'democracy' through jurisdictional competition.....	51
4. Democratic input: the experience of optional instruments.....	52
5. Private law: design or organism?	53
6. Concluding remarks.....	55
Bibliography	56
Part II Legal procedure and regulation of professions.....	61
Chapter 5: Doing comparative law and economics: why the future is micro and not macro	63
Nuno Garoupa	
1. Property law	66
2. Contracts	67
3. Administrative law	68
Bibliography	70
Chapter 6: The impact of civil procedure reforms on costs and delay.....	73
Paul Fenn, Neil Rickman and Dev Vencappa	
1. Introduction	73
2. The Woolf reforms	74
3. Hypotheses	76
3.1. Pre-action claims	76
3.2. Post-action claims	77
4. Data	77
4.1. Introduction	77
4.2. Definition of terms	78
4.3. Methods.....	79
5. Results	79
5.1. Introduction	79
5.2. Graphical analysis.....	79
5.2.1. Volume of cases closed.....	79
5.2.2. CFA vs. non-CFA cases	81
5.2.3. Litigated vs. non-litigated claims.....	85
5.3. Regression analysis	88
6. Conclusions.....	90
Bibliography	91

Chapter 7: Regulation of professions: a European perspective 93
 Niels Philipsen

1.	Introduction	93
2.	The economic theory of regulation	94
2.1.	The public interest approach.....	94
2.2.	The private interest approach.....	97
2.3.	Forms of professional regulation	98
2.4.	Self-regulation	101
3.	Developments in the EU	102
3.1.	The European Commission project	102
3.2.	Other European developments	106
4.	Concluding remarks	107
	Bibliography	109

Chapter 8: The regulation of legal profession and the access to the supreme
 courts.....115
 Bruno Deffains

1.	Introduction	115
2.	Eléments méthodologiques	116
2.1.	Considérations générales sur les réglementations professionnelles	116
2.2.	Avantages et coûts	117
3.	Comment évaluer les effets de la réglementation ?.....	119
3.1.	Contrôle direct de la qualité des services	119
3.2.	Contrôle des compétences et des comportements.....	121
4.	Contrôle de la qualité	122
4.1.	L'information des « consommateurs »	122
4.2.	La formation de réputations	123
4.3.	Droit d'exercice exclusif	125
5.	Contrôle des compétences	125
5.1.	Les facteurs de motivation.....	126
5.2.	Titres réservés.....	127
5.3.	Droit d'exercice exclusif	128
6.	Contrôle des comportements.....	130
7.	Les modes de prestation de services et l'indépendance des avocats devant les juridictions suprêmes	131
7.1.	Une gouvernance professionnelle basée sur le strict contrôle des effectifs.....	132
7.2.	L'indépendance des avocats devant les juridictions suprêmes	133
8.	Effets externes, biens publics et considérations tutélaires.....	135
8.1.	Effets externes.....	136
8.2.	Officiers ministériels et bien public	136
8.3.	Considérations tutélaires	137
9.	Conclusion générale	138

Table of contents

Part III Corporate and consumer regulation	141
Chapter 9: Reforming investor protection regulation: the impact of cognitive biases.....	143
Emilios Avgouleas	
1. Introduction	143
2. Investor protection regulation and behavioural finance	146
2.1. The rational choice foundations of investor protection regulation	146
2.2. Principles of behavioural finance.....	147
2.3. Investor herding and asset market bubbles.....	152
2.4. Bounded rationality and disclosure	155
3. Is paternalistic regulation the right response to cognitive biases?	156
3.1. BDT and paternalistic regulation.....	156
3.2. The perils of soft paternalism.....	157
4. Evolutionary investor protection regulation: a framework for reform .	158
4.1. The behavioural case for reform	158
4.1.1. There is no case for wholesale reform	158
4.1.2. Evolutionary regulation: targeted reform.....	159
4.2. Investment advice, investment promotions, issuer disclosure, and investor cognitive boundaries	160
4.3. Investment management contracts and fund manager herding.....	163
5. Conclusion	164
Bibliography	166
Chapter 10: Direct-to-consumer prescription drug advertising: testing the limits of legal paternalism.....	177
Michael Trebilcock	
1. Introduction	177
2. The social value of advertising.....	178
3. The arguments for and against DTCA	180
4. The choice of regulatory instrument	181
5. Conclusion	188
Bibliography	189
Chapter 11: Brands, business and social responsibility	193
Andrew Griffiths	
1. Introduction	193
2. Social responsibility in business activity.....	194
3. The trade mark as a structuring device.....	195
3.1. Trade marks and branding	195

3.2.	Branding and undertakings.....	197
3.3.	The impact of branding on production.....	200
3.4.	Branding and marketing	202
3.5.	The implications of the brand for social responsibility	203
4.	The trade mark as a signalling device.....	203
4.1.	Branding as a force for social responsibility?	203
4.2.	Branding and the reduction of search costs.....	206
4.2.1.	Product differentiation and invisible characteristics.....	206
4.2.2.	Branding as information	207
4.2.3.	Branding, information and social responsibility	209
4.3.	Branding as something more than information.....	211
4.3.1.	The attractive power of strong brands	211
4.3.2.	Brands as intangible output.....	213
4.3.3.	Implications for social responsibility	214
5.	Conclusion	215
	Bibliography	216

Chapter 12: Investor ownership and control over companies; some remarks
on the structure of companies and the position of the equity partners221
Kid Schwarz

1.	Ogus and the law and economics perspective	221
2.	Introduction	221
3.	The right to instruct management	222
4.	The decision rights strategy in companies and partnerships.....	224
5.	The evolution of legal personality	227
6.	The law and economics perspective.....	229
7.	Decision rights strategy and <i>de facto</i> management	231
8.	Market acceptance of limited liability	234
	Bibliography	236

Part IV Tort and insurance.....237

Chapter 13: Partial blindness and alternative insights in the ascription of
negligence liability

239

John Murphy and Frank Stephen

1.	Introduction	239
2.	Transaction costs, rights and remedies	240
2.1.	Transaction costs and recourse to the law	240
2.2.	Transaction costs and legal remedies	241
3.	Negligence liability and expected damage?	243
3.1.	A bad hand from the start.....	243
3.2.	A behavioural alternative	246
4.	Conclusion	249
	Bibliography	250

Table of contents

Chapter 14: Insurance law and economics: an empirical perspective.....	253
Willem van Boom	
1. Introduction	253
2. Is theory reflected in practice?.....	254
2.1. Demand for insurance in an empirical perspective.....	254
2.2. Adverse or propitious selection?	256
2.3. Empirical evidence of moral hazard?.....	259
2.4. How does the insurance industry actually respond?.....	260
3. Relevance of behavioural insights for European insurance law and policy	262
3.1. Insurance demand and information.....	263
3.2. Insurable interest.....	264
3.3. Moral hazard and adverse selection.....	265
4. Appraisal.....	266
Bibliography	267
Part V Enforcement.....	277
Chapter 15: Enforcement of consumer law by consumer associations	279
Roger Van den Bergh	
1. Introduction	279
2. The deterrence perspective	282
2.1. The deficiencies of private enforcement by individual consumers.....	282
2.2. The preventive function of representative actions by consumer associations	284
2.2.1. Better information.....	284
2.2.2. Curing rational apathy	284
2.2.3. Overcoming free-riding.....	287
2.3. The principal-agent problem.....	288
2.3.1. A comparison with class actions.....	290
2.3.2. Actions brought by consumer associations	292
3. The corrective justice perspective	295
3.1. Opt-in representative actions by consumer associations.....	296
3.2. Opt-out and mandatory representative actions.....	297
4. Conclusions.....	298
Bibliography	301
Chapter 16: The impact of costs of crime methodology on criminal justice policy.....	307
Roger Bowles	
1. Introduction	307
2. Estimating the costs of crime	309
2.1. Economic appraisal and evaluation.....	309