



**UNIVERSITÉ
DE GENÈVE**

Archive ouverte UNIGE

<https://archive-ouverte.unige.ch>

Livre

2023

Extract

Open Access

This file is a(n) Extract of:

Comparative Contract Law : Exercises in Comparative Methodology

Kadner Graziano, Thomas

This publication URL:

<https://archive-ouverte.unige.ch/unige:177484>

© This document is protected by copyright. Please refer to copyright holders for terms of use.

Comparative Contract Law

Exercises in Comparative Methodology

Third Edition

Thomas KADNER GRAZIANO

Professor, University of Geneva, Switzerland

Translation of materials by

Christopher BOOTH, Eleanor MERRETT, Rachel HARRISON, et al.



Edward Elgar
PUBLISHING

Cheltenham, UK • Northampton, MA, USA

© Thomas Kadner Graziano 2023

Cover image:

The Terminus, Penzance Station, Cornwall
Alexander Forbes Stanhope (1857–1947)
National Railway Museum, York
Science and Society Picture Library

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

Published by
Edward Elgar Publishing Limited
The Lypiatts
15 Lansdown Road
Cheltenham
Glos GL50 2JA
UK

Edward Elgar Publishing, Inc.
William Pratt House
9 Dewey Court
Northampton
Massachusetts 01060
USA

A catalogue record for this book is
available from the British Library

Library of Congress Control Number: 2022948449



ISBN 978 1 80037 366 2 (cased)
ISBN 978 1 80037 368 6 (paperback)
ISBN 978 1 80037 367 9 (eBook)

Printed and bound in Great Britain by TJ Books Limited, Padstow, Cornwall

Contents

<i>About the author</i>	vii
<i>Preface</i>	viii
<i>Acknowledgements</i>	xii
<i>Translations</i>	xvi
<i>List of abbreviations</i>	xxii
<i>Table of provisions of codes, statutes, and principles of law reproduced</i>	xxxii

PART A INTRODUCTION

1. Contract law in the 21st century – the purpose of this book	2
2. A case-oriented and multilateral approach to the teaching and studying of comparative law: the approach used in this book	5
3. Is it legitimate and beneficial for judges to compare?	21

PART B CASE STUDIES

I. Formation of contracts

1. Offer or invitation to treat (<i>invitatio ad offerendum</i>)?	55
2. Conditions for the formation of a contract – agreement or more? (<i>cause</i> and <i>consideration</i>)	145
3. Obligation to maintain an offer or freedom to revoke it?	209
4. Modification of contracts – the free will of the parties or limits on the freedom to contract (<i>consideration revisited</i>)?	252
5. The battle of forms	284

II. Performance of contracts

6. A right to performance of the contract or only a right to damages?	334
7. Damages and the role of fault in the event of delivery of goods not in conformity with the contract	390
8. Contractual penalty clauses	452
9. Termination or alteration of a contract in the event of a fundamental change of circumstances? (<i>Clausula rebus sic stantibus</i> or <i>imprévision</i>)	499
10. Contracts and the transfer of ownership in movable property	562

III. The law applicable to cross-border contracts and the future of European contract law

11. The law applicable to cross-border contracts (introduction)	614
12. The future of European contract law	649

Index	713
-------	-----