

Marta Santos Silva

The Draft Common Frame of Reference as a “Toolbox” for Domestic Courts

A Solution to the Pure Economic Loss
Problem from a Comparative
Perspective

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Foreword

I met Dr. Marta Santos Silva when she was a promising student at the Law School of the Portuguese Catholic University in Oporto and have followed, with great interest, her subsequent steps as a bright young scholar. I was, therefore, deeply honoured by her invitation to write a small foreword to this book, which focuses on the concept of loss in tort law and, particularly, so-called pure economic loss.

James Gordley¹ pointed out that, although there may be valid reasons to deny recovery of pure economic loss, the exclusionary rule “was adopted for reasons which commended themselves to the 19th century conceptualists”.

The exclusionary rule is a recent one but despite the new wording it is, to some extent, an old problem. Compensation for pure economic loss was admitted in the Middle Ages and resulted in heated debate.² Conversely, Christian von Bar, in his fundamental work, “The Common European Law of Torts”,³ rightly stated that the Portuguese Civil Code, “like the more modern codes of other European nations, (...) is marked by a certain legal eclecticism”. Although strongly influenced by the German doctrine and the German Civil Code, the Portuguese legislator did not blindly follow in the footsteps of the BGB and, as a result, Article 483 of the Portuguese Civil Code, in spite of a strong German influence,⁴ must not be seen as a general clause with a restrictive scope. To the contrary, it must be read in conjunction with other legal rules that may be called upon to broaden the concept of an unlawful act that can provide a basis for reparation of a loss. This explains von Bar’s remark that “although the Portuguese law of delict appears rather conservative in some areas, it nevertheless reacted very ‘positively’ to a number of recent developments concerning the principles of liability law”.⁵ Recently, the Portuguese

¹Gordley (2006), p. 263.

²*ibid.*, p. 266 ff.

³von Bar (1998a), p. 33.

⁴*ibid.*

⁵*ibid.*, p. 36.

Supreme Court has seen fit to award reparation for pure economic loss, in a case where the wrongdoer acted with the intent to cause a loss to his or her neighbour.⁶

This book provides useful insights into the possibility of legitimising the recourse to the DCFR, as well as offering a comprehensive overview of the methods used by both scholars and courts in Portugal. It is an attempt to adapt a Code with a lifespan of half a century and to cautiously modernise the possibility of recovering pure economic loss without forgetting that “one person should not have to subsidise another’s vulnerability”.⁷ It also represents a fair assessment of the role of the judge, torn between the need to adapt the law to an ever-changing world and the lack of political legitimacy in countries of the Civil Law tradition.

Júlio Gomes, L.L.M. (Columbia University), DPhil (Oxford) Judge at the Portuguese Supreme Court, Invited Law Professor at the Portuguese Catholic University, Member of the Study Group on a European Civil Code’s Co-ordinating Group and Advisory Council.

⁶STJ 8 September 2016, proc. 1952/13.6TBPVZ.P1.S1.

⁷Gordley (2006), p. 284.

Preface

In this book, I undertook the daunting task of referring in English to terms taken from Civil Law legal systems (“legal irritants”, as some call them).⁸ This is a perilious undertaking because English, “the *lingua franca* of modern times”⁹ unconsciously carries with it the baggage of concepts and principles of Common Law.¹⁰ Therefore, for the sake of clarity, I have opted to express myself in mainly descriptive legal English.¹¹ Most of the terms here were used in line with the terminology proposed by the Draft Common Frame of Reference. Whenever the translation of a term was disputed, I included the concept as expressed in the native language of the system in which it originated.

As regards case law, I refer to the first page of the decision, followed by each cited page in turn. Whenever a paper-format source is not named for a decision of a Portuguese court, it can be understood that the decision is only available in electronic format through the legal database of the Portuguese Ministry of Justice.¹²

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⁸Teubner (1998), pp. 11–32.

⁹von Bar (2000c), p. 69.

¹⁰See von Bar (1998a), p. 383; Swann (2003), pp. 2–3; von Bar (2011b), p. 391.

¹¹On the importance of a descriptive drafting style, see von Bar (2009d), p. 56.

¹²<http://www.dgsi.pt> (accessed 31 March 2017).

Acknowledgments

This book is an adapted version of the doctoral thesis submitted and defended on 8 February 2016 at the University of Osnabrück. It is the result of several years of research at the European Legal Studies Institute and the Centre of European Law and Politics (in Osnabrück and Bremen, Germany, respectively). The research and publication was partly financed through a doctoral fellowship of the *Fundação para a Ciência e a Tecnologia – Ministério da Ciência, Tecnologia e Ensino Superior de Portugal* (SFRH/BD/38610/2007). The final stages of research and drafting were facilitated by the generous flexible work arrangements agreed by Prof. Manuela Magalhães from the University Portucalense Infante D. Henrique (Porto, Portugal) and Prof. Christoph Schmid (Bremen).

The completion of this book would have not been possible without the patient guidance of Prof. Christian von Bar to whom I am, at many levels, greatly indebted. I am also sincerely grateful to Prof. Schulte-Nölke for the helpful comments and suggestions for improvement, as well as to Prof. Thomas Große, for chairing the doctoral committee assessing my Ph.D. and raising many relevant connections between the topics therein and Public Law.

My thanks also to several people with whom I had very fruitful discussions of the ideas and challenges in the book during the drafting process. I would particularly like to thank: Dr Rui Casção, for his endless availability to dissect the most disputed issues and the overall structure of the book; Supreme Court Judge António Fonseca Ramos, for his patience in several lengthy discussions of the most recent case law decisions of the Portuguese Supreme Court, and lastly, Supreme Court Judge Professor Júlio Gomes, for his bright insights and input, for drafting the foreword of this book and for his tireless support for my career.

I also owe a debt of gratitude to those colleagues and friends who engaged in many long discussions about the particular issues addressed by this book.

To: Supreme Court Judge Prof. Graça Trigo, Prof. Gert Brüggemeier, Prof. Manuel Carneiro da Frada, Prof. Luisa Antoniulli, Prof. Stathis Banakas, Prof. Nieves Fenoy, Prof. Fernando Torrão, Dr Carlos Nóbrega, Dr Celia Martinez, Dr Fernando Sá, my thanks for your invaluable input.

A special word of thanks goes to Dr Sabine Mehlmann of the Ph.D. Career Center at the University of Osnabrück. She guided me through the preparation of the doctoral thesis and under her careful tutelage I managed to avoid embodying Penelope, undoing and redoing the woven (thesis') web.

The unconditional support of my family and friends gave me the strength to endure and reach the end of this, at times, seemingly endless marathon. My final and most heartfelt thanks, then, to my parents, for their support and their anxiety on my behalf through my nail-biting and head-scratching moments; to my good friend Diana, who ran with me, on her own track, in that last against-the-clock academic sprint and, lastly, to Goran, for supporting me in every possible way and making me believe in the impossible. I share with him the merits of this achievement.

Introduction

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean — neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master — that’s all.”

Lewis Carroll, “Through the Looking-Glass, and What Alice Found There” (1871)

Three decades ago, a well-known Portuguese legal sociologist wrote that “we live in a time of legal porosity”.¹³ This sentiment remains current insofar as the present-day Portuguese regime of non-contractual liability is concerned.

This regime, provided for in the Portuguese Civil Code, is less than fifty years old. However, it is deeply embedded within the philosophy of the secular German Civil Code (*Bürgerliches Gesetzbuch*). Both revolve around the cornerstone of the historical concept of unlawfulness (*ilicitude*, *Rechtswidrigkeit*), whose fundamental view is that the legislature intended to restrict the protection of pure economic interests.

The spectrum of economic interests worthy of legal protection in the eyes of the courts has diversified in recent years, as unprecedented industrial and technological development multiplied the risk of damage being inflicted. Within this context, the requirement of unlawfulness has revealed itself to be *porous*, with multiple facets into which liability seeps.

In fact, “forced” to deal with unlawfulness as a requirement of liability, courts have skillfully influenced the concept through the use of general clauses and open-ended concepts on the one hand, and through the extension of contract law devices to the field of non-contractual liability, on the other. The proliferation of legal developments has moved the application of the concept away from the intent of the legislature, which was to provide for strict filters on the liability of pure economic loss. A regime traditionally thought to be conservative in theory—and which

¹³Sousa Santos (1987), p. 298. See also Markesinis (2006), p. 1364 and Violante (2011), p. 343.

maintains this façade in general¹⁴—has come close in nature to the systems which provide for a general clause of liability. This development has the potential to lead to the progressive opening of the “floodgates” of litigation,¹⁵ burdening both the judicial system and, often, the person inflicting the harm, with a liability that may be disproportionate to his or her actual fault. The expansion of the requirements of liability, as provided for by law, may also ultimately affect those citizens with a pervasive risk of liability, with an associated further impact as far as insurance policies are concerned. Too, the considerable judicial creativity makes it more difficult to foresee the outcomes of cases and can potentially lead to the application of different rules to cases with similar facts. A consistent, objective and self-comprising framework, which is a requirement for legal certainty and equality before the law, seems to be lacking in the non-contractual area of the civil liability system.

In spite of this, the requirement of unlawfulness and the law of non-contractual liability in general, have not been amended since their promulgation and entry into force in Portugal. Academics acknowledge the legal developments leading to the expansion of liability—a more detailed discussion of which can be found in § 5—but a systematic and critical approach to such expansion remains necessary.

This book analyses whether or not the solution to the legal problems caused by the requirement of unlawfulness may involve the Draft Common Frame of Reference (DCFR). The DCFR consists of a comprehensive set of principles, definitions and model rules, including a Book on “non-contractual liability arising out of damage caused to another”, and which—as part of its “toolbox” function—aims to assist national courts in solving national disputes (see analysis under § 3 below). More specifically, the research question investigates whether Portuguese courts *could* and *should* informally consider¹⁶ the concept of “legally relevant damage” in the adjudication of domestic disputes, particularly in light of the current stalemate created by the question of the protection of pure economic interests.

The interpretation of Portuguese rules on non-contractual liability arising out of damage caused to another in the light of the DCFR, within the process of adjudication, is yet to be considered. The hypothesis should be measured in light of the abandonment of the concept of a Common European Sales Law (CESL) by the European Commission and the reluctance to reduce a harmonised European private law instrument to a digital single market instrument. Several EU Member States have, however, publicly endorsed the idea of a non-binding toolbox (as will be seen in § 3 below), and this is also relevant to the discussion.

This book presents its arguments in three parts.

The first part deals with the first element of the research question, which consists of a *macro-analysis* of the possible role of the DCFR, in particular in the Portuguese private legal system. The second part addresses the second element of the research

¹⁴Bussani and Palmer (2003a), p. 532.

¹⁵Spier and von Bar (1998b).

¹⁶On the “informal Europeanisation of private law”, see von Bar et al. (2009), Intr. 8, p. 9.

question, and is a *micro-analysis*¹⁷ of this possible role, that is, it presents an assessment of the role of the DCFR in one of its main original concepts, that of “legally relevant damage”. The third and final part of this book weighs and comments on the arguments presented in the first two parts.

Part I (“*The Portuguese Civil Code Through the Prism of the Draft Common Frame of Reference*”) considers whether or not Portuguese courts *could* use the DCFR in the adjudication of legal disputes. It gives a brief overview of the historical evolution of Portuguese codified law and its openness towards foreign sources of law. It explores the evolutionary process which culminated in the approval of the present-day Civil Code and the extent to which the latter was influenced by the BGB, as well as the general opinion towards a European Civil Code and the convergence of European private laws in general (§ 1—*Portuguese Codified Law and Its Broad-Minded Attitude Towards Comparative Law and Jurisprudence from a Historical Perspective*). Following the historical overview, the book outlines the theoretical framework that binds Portuguese courts in the present-day adjudication process. As such, it describes and analyses the system of sources of law, as well as the accepted methods of legal interpretation and integration provided for in the Portuguese Civil Code (§ 2—*Judges as Key Players in the Development of European Private Law*).

The final section of Part I discusses the extent to which Portuguese courts can use the DCFR as a source of law in the adjudication process. An examination of courts’ analysis of the Portuguese Civil Code in the light of foreign legal systems is presented, and the DCFR itself is assessed in more detail, namely, its nature and purpose, together with its current and potential impact on the case law of Portuguese courts (§ 3—*A Role for the DCFR in Domestic Adjudication*).

After discussing if Portuguese courts *could* use the DCFR in the adjudication of legal disputes in preference to Portuguese sources of law, the question arises as to whether or not Portuguese courts *should* use the DCFR, using the example of the concept of “legally relevant damage” as a potential mechanism to bring to an end the stalemate created by the category of pure economic loss.

Part II (“*A Plea for the Informal Acceptance of the Concept of ‘Legally Relevant Damage’ as a Way to Break the Stalemate Created by the Category ‘Pure Economic Loss’*”) begins with an overview of the Portuguese regime of non-contractual liability arising out of damage caused to another, the general rule of liability and its respective requirements, in particular the requirement of *ilicitude* (§ 4—*General Remarks on the Non-Contractual Liability Regime Arising out of Damage Caused to Another in the Portuguese Civil Code*). The next section analyses the extent to which the present-day framework of liability—based upon the requirement of unlawfulness—, copes with the compensation of relevant pure economic interests (§ 5—*Drawbacks of Unlawfulness and Compensation of Pure Economic Loss*). In the subsequent section, the main aspects of Book VI of the DCFR, specifically the basic rule and its particular features, are analysed (§ 6—*General Remarks on the*

¹⁷For similar terminology, see Zweigert and Kötz (1998), pp. 4–5.

Non-Contractual Liability Regime Arising out of Damage Caused to Another in the Draft Common Frame of Reference (PEL Liab. Dam.).

The last section of Part II analyses the real protagonist of this book, namely, the cutting-edge concept of legally relevant damage, examining how, in the absence of a category of “pure economic loss”, pure economic interests are protected by Book VI of the DCFR (§ 7—*Reception of the DCFR’s Concept of “Legally Relevant Damage” and its Potential for the Protection of Pure Economic Interests*).

Part III (“*Critical Remarks: Cutting the Gordian Knot with the DCFR*”), the third and last part of this book, presents a critical analysis of the legal problems raised in Parts I and II (§ 8—*The Deadlock of Pure Economic Loss and the Quest for a Solution*), including the arguments specifically discussed in Part I (§ 9—*Could Portuguese Courts use the DCFR over National Sources of Law?*) and Part II (§ 10—*Should the Portuguese Courts use the DCFR’s concept of “Legally Relevant Damage”?*).

As for the scope of the book, Part I touches on topics in the areas of Legal History, Constitutional Theory, Philosophy of Law, Legal Methodology, *inter alia*. Their importance and impact are visible throughout the arguments here, although such references are not intended to be exhaustive.

The central issue is non-contractual liability arising out of damage caused to another involving fault. A closer examination of the claims surpassing this theoretical playing field is outside the scope of this particular book and is left for future analysis.

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Abbreviations and Acronyms

AAFDL	Associação Académica da Faculdade de Direito de Lisboa (Portugal)
Aa. Vv.	Auctores varii (various authors)
ABGB	Allgemeines Bürgerliches Gesetzbuch (Civil Code, Austria)
AC	Appeal Cases (House of Lords, London), cited by year, book and page
AcP	Archiv für die civilistische Praxis (Tübingen), cited by number, year and page
Admin.	Administração (Macau), cited by number, year and page
AJCL	The American Journal of Comparative Law (Baltimore/Berkeley), cited by volume, year and page
ALJ	Austrian Law Journal (Graz), cited by number, year and page
ALSLS	Amsterdam Law School Legal Studies Research Paper (Amsterdam), cited by number, year and page
AmJCL	The American Journal of Comparative Law (Ann Arbor), cited by volume, year and page
AöR	Archiv des öffentlichen Rechts (Tübingen), cited by number, year and page
Apud	In the writings of
Ariz. L. Rev.	Arizona Law Review (Tucson), cited by volume, year and page
Art.(s)	Article(s)
AS	Análise Social (Lisbon), cited by volume, year and page
AT	Allgemeiner Teil (general part)
B2B	Business-to-business
B2C	Business-to-consumer
BAGE	Entscheidungen des Bundesarbeitsgerichts (Decisions of the Federal Labour Court, Germany), cited by first page of the decision and page referenced
Bd.	Band (volume)

BEUC	Bureau Européen des Unions des Consommateurs (The European Consumer Organisation)
BFD	Boletim da Faculdade de Direito da Universidade de Coimbra (Magazine of the Law Faculty of the University of Coimbra, Portugal), cited by volume, year and page
BGB	Bürgerliches Gesetzbuch (Civil Code, Germany)
BGBI	Bundesgesetzblatt (Official Journal issued by the Ministry of Justice, Germany, Bonn/Cologne), cited by part and page
BGH	Bundesgerichtshof (Federal Court of Justice, Germany)
BGHZ	Amtliche Sammlung der Entscheidungen des Bundesgerichtshofs in Zivilsachen (Decisions of the German Federal Court of Justice in civil matters), cited by volume and page
BolMinJus	Boletim do Ministério da Justiça (Bulletin of the Ministry of Justice, Lisbon), cited by volume, year and page
BT	Besonderer Teil (special part)
BverfGE	Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court of Germany), cited by volume, first page of the decision and page referenced
Cass.	Corte Suprema di Cassazione (Court of Cassation, Italy)
CC	Código Civil Português (Civil Code, Portugal), DL 47344 of 25 November 1966, published in DR, 1 st Ser., no. 274 (1966), pp. 1883–2086, with amendments
CCP	Code of Civil Procedure; abbreviation used coherent for the following Codes: CCP 2013, Código de Processo Civil (Portugal), approved by the Act 41/2013 of 26 June 2013, published in DR, 1 st Ser., no. 121 (2013), pp. 3518–3665, with amendments; CCP 1961, Código de Processo Civil (Portugal), approved by the DL 44129 of 28 December 1961, published in DR, 1 st Ser., no. 299 (1961), pp. 1783–1962
CCrim	Criminal Code, Código Penal (Portugal), approved by the DL 400/82 of 23 September 1982, republished by Act 59/2007 of 4 September 2009, published in DR, 1 st Ser., no. 170 (2007), pp. 6181, 6258
CDP	Cadernos de Direito Privado (Braga), cited by number, year and page
CEJ	Centro de Estudos Judiciários (Portugal)
CES	Centro de Estudos Sociais; E-cadernos CES (Coimbra), cited by number, year and page
CESL	Common European Sales Law
cf.	Confer
CFR	Common Frame of Reference
Ch.	The Law Reports. Chancery Cases, cited by year, volume and page

chap(s).	Chapter(s)
CISG	United Nations Convention on Contracts for the International Sale of Goods
CJ	Colectânea de Jurisprudência (Collection of case law, Coimbra), cited by volume, year and page
CJICL	Cardozo Journal of International and Comparative Law (New York), cited by volume, year and page
CJ(ST)	Colectânea de Jurisprudência. Acórdãos do Supremo Tribunal de Justiça (Collection of case law, rulings of the Supreme Court of Justice, Coimbra, Portugal), cited by volume, year and page
CLJ	The Cambridge Law Journal (Cambridge), cited by volume, year and page
Colum. J. Eur.	The Columbia Journal of European Law (New York), cited by volume, year and page
com.	Comment
Comm.	Chambre commerciale, financière et économique de la Cour de cassation (Cour de cassation) (commercial, financial and economic division of the Court of Cassation)
CONPEDI	Conselho Nacional de Pesquisa e Pós-Graduação em Direito (Brazil)
Const.	Constitution; abbreviation used coherent for the following Constitutions: Constituição da República Portuguesa, CRP (Constitution of the Portuguese Republic) approved by the Constitutional Act 1/2005 of 12 August 2005, 1 st Ser., no. 155 (2005), pp. 4642–4686, with amendments; Grundgesetz, GG, Basic Law for the Federal Republic of Germany, promulgated on 23 May 1949 (Federal Law Gazette, p. 1 ff.), with amendments
contrib.	Contributor(s)
coord.	Coordinator(s)
Corte Cost.	Corte Costituzionale (Constitutional Court of Italy)
CPRP	Constituição Política da República Portuguesa (Political Constitution of the Portuguese Republic of 1933) approved by the Decree 22241 of 22 February 1933, published in the DR, 1 st Ser., no. 43 (1933), pp. 227–236
CS	Código de Seabra (Portugal), approved by the Charter of 1 July 1867
CSOH	Court of Session Outer House (Scotland), cited by year and page
CT	Código do Trabalho (Portuguese Labour Code), approved by the Act 7/2009 of 12 February 2009, published in 1 st Ser., no. 30, pp. 926–1029, with amendments
DCFR	Draft Common Frame of Reference
DG	Directorate-General
Dir	O Direito (Lisbon), cited by volume, year and page
Dir(s).	Director(s)

Dir.just.	Direito e Justiça (Lisbon), cited by year and page
DL	Decreto-lei (Decree-law) (Portugal)
DR	Government gazette (Lisbon, Portugal), named Diário do Governo from 1 January 1869 until 9 April 1976 and Diário da República since 10 April 1976, cited by number, year and series
EC	European Community
ECJ	European Court of Justice (Luxembourg)
ECR	European Court Reports (Luxembourg)
ed.(s)	Edition, editor(s)
Edinburgh	The Edinburgh Law Review (Edinburgh), cited by volume, year and page
LRev	
EEC	European Economic Community
e.g.	Exempli gratia (for example)
EGTL	European Group on Tort Law
EJCL	Electronic Journal of Comparative Law (Maastricht/Tilburg/ Utrecht), retrieved from http://www.ejcl.org and cited by volume, year and page
EJLE	European Journal of Law and Economics (New York), cited by volume, year and page
EJLS	European Journal of Legal Studies (Fiesole), cited by volume, year and page
ELF	The European Legal Forum (Munich), cited by volume, year and page
ELJ	European Law Journal (Oxford/Malden), cited by volume, year and page
ELSI	European Legal Studies Institute (Osnabrück, Germany)
ERA Forum	ERA Forum Journal of the Academy of European Law (Trier), cited by volume, year and page
ERCL	European Review of Contract Law (Berlin), cited by volume, year and page
ERPL	European Review of Private Law (Deventer), cited by volume, year and page
et al.	et alii (and others)
EU	European Union
EuR	Europarecht (Baden-Baden), cited by year, issue and page
Europa e dir. priv.	Europa e diritto privato (Milan), cited by number, year and page
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (Munich/Frankfurt), cited by year and page
f.(f.)	Following page(s)
FDUL	Faculdade de Direito da Universidade de Lisboa (Law Faculty of the University of Lisbon)
Foro it.	Il Foro Italiano, Raccolta di giurisprudenza civile, commerciale, penale, amministrativa (Rome), cited by year, volume and column

Foro pad.	Il Foro Padano, Rivista di giurisprudenza e di dottrina (Milan), cited by volume, year and page
fn(n).	Footnote(s)
GPR	Zeitschrift für Gemeinschaftsprivatrecht (Cologne/Heidelberg/Munich/Frankfurt am Main), cited by volume, year and page
Giur.it.	Giurisprudenza Italiana (Turin), cited by year, part, section and column
Giust. Civ.	Giustizia Civile. Massimario annotato della Cassazione (Milan), cited by year and page
Mass.	
G.U.	Gazzetta Ufficiale (Government gazette, Italy, Rome)
Harv.ILJ	Harvard International Law Journal (Cambridge), cited by volume, year and page
ibid.	ibidem (in the same place)
ICLQ	International and Comparative Law Quarterly (London), cited by volume, year and page
i.e.	id est (that is to say)
IJVO	Internationale Juristenvereinigung Osnabrück (Osnabrück), cited by number, year and page
InDret	Review on the Analysis of Law, retrieved from http://www.indret.com/en/ and cited by number and year
Intr.	Introduction
IrLE	International Review of Law and Economics (Amsterdam), cited by volume, year and page
ISLR	The Irish Student Law Review (Dublin), cited by volume, year and page
JA	Juristische Arbeitsblätter, Zeitschrift für Studenten und Referendare (Munich/Berlin/Bielefeld/Frankfurt am Main/Berlin/Cologne), cited by year and page
JB1	Juristische Blätter (Vienna), cited by year and page
JCL	Journal of Comparative Law (London), cited by volume, year and page
JI	Juridica International (Tartu), retrieved from http://www.juridicainternational.eu/ and cited by volume, year and page
J.Law & Soc	Journal of Law and Society (Cardiff), cited by volume, year and page
JLS	The Journal of Legal Studies (Chicago), cited by volume, year and page
J.Rev	The Juridical Review (Edinburgh), cited by volume, year and page
JTLP	Journal of Transnational Law and Policy (Tallahassee/Buffalo), cited by volume, year and page
Jura	Jura. Juristische Ausbildung (Berlin), cited by year and page
JuS	Juristische Schulung. Zeitschrift für Studium und Referendariat (Munich/Frankfurt am Main), cited by volume, year and page

JZ	JuristenZeitung (Tübingen), cited by volume, year and page
KB	King's Bench
KF	Karlsruher Forum. Supplement to VersRAI (Karlsruhe), cited by year and page
Legal Affairs	Legal Affairs (n. p.), retrieved from http://www.legalaffairs.org and cited by year
LGDJ	Librairie générale de droit et de jurisprudence (French publishing company)
LQR	The Law Quarterly Review (London), cited by volume, year and page
LR	Legal Roots, cited by volume, year and page
Minn.L.Rev.	Minnesota Law Review (Minneapolis), cited by volume, year and page
MJ	Maastricht Journal of European and Comparative Law (Antwerp/Baden-Baden), cited by volume, year and page
MLR	The Modern Law Review (London), cited by volume, year and page
n.d.	No date
NJA	Nytt juridiskt arkiv (Supreme Court reports, Sweden)
NJW	Neue Juristische Wochenschrift (Munich/Frankfurt am Main), cited by volume, year and page
N.n.	No name
n(n).	Note(s) or comment(s) (to article)
no(s).	Number(s); margin number(s)
n.p.	No place
NVwZ	Neue Zeitschrift für Verwaltungsrecht (Munich/Frankfurt am Main), cited by volume, year and page
NY	New York
OJ	Official Journal
OJLS	Oxford Journal of Legal Studies (Oxford), cited by volume, year and page
org(s).	Organiser(s)
para(s).	Paragraph(s)
Passim	Passim (here and there)
PECL	Principles of European Contract Law
PEL	Principles of European Law
PEL Liab.	Principles of European Law: Non-Contractual Liability arising out of Damage caused to Another
Dam.	
PETL	Principles of European Tort Law
p(p).	Page(s)
proc.	Processo (court case)
Prot. I	Protokolle der Kommission für die erste Lesung des Entwurfs des Bürgerlichen Gesetzbuchs (Protocol of the Commission on the first reading of the draft of the German Civil Code)

QB	The Law Reports. Queen's Bench Division (London), cited by year, book and page
RabelsZ	Zeitschrift für ausländisches und internationales Privatrecht or Rabels Zeitschrift für ausländisches und internationales Privatrecht (Hamburg), cited by volume, year and page
RCCS	Revista Crítica de Ciências Sociais (Coimbra), cited by number, year and page
RDE	Revista de Direito e Economia (Coimbra), cited by volume, year and page
RDPC	Revista Portuguesa do Dano Corporal (Coimbra), cited by volume, year and page
RE	Relação de Évora (Court of Appeal of Évora), Portugal
Recht	Recht. Zeitschrift für juristische Weiterbildung und Praxis (Bern), cited by year and page
repr.	Reimpressão (reprint)
Rev.int.dr. comp.	Revue internationale de droit comparé (Paris), cited by volume, year and page
RFDUL	Revista da Faculdade de Direito da Universidade de Lisboa (Lisbon), cited by number, year and page
RG	Relação de Guimarães (Court of Appeal of Guimarães), Portugal
RGZ	Amtliche Sammlung der Entscheidungen des Reichsgerichts in Zivilsachen (Decisions of the German Imperial Court in civil matters, Berlin), cited by volume and page
RHDI	Revue Hellénique de Droit International (Athens), cited by volume, issue and page
RIL	Revista de Informação Legislativa (Brasília), cited by volume, year and page
Riv.dir.eur.	Rivista di Diritto Europeo (Rome), cited by volume, year and page
RJLB	Revista Jurídica Luso-Brasileira (Lisbon), cited by volume, year and page
RJVV	Revista Jurídica Verba Volant, Scripta Manent (Patos), cited by volume, year and page
RL	Relação de Lisboa (Court of Appeal of Lisbon), Portugal
RLJ	Revista de Legislação e Jurisprudência, Coimbra (Portugal), cited by volume, year and page
ROA	Revista da Ordem dos Advogados, Lisbon (Portugal), cited by volume, year and page
RP	Relação do Porto (Court of appeal of Porto), Portugal
RPDC	Revista Portuguesa do Dano Corporal (Coimbra), cited by volume, year and page
Rut.LR	Rutgers Law Review (Buffalo/New Brunswick), cited by volume, year and page
SAP	Sentencia dela Audiencia Provincial (Decision of a Provincial Court)

ser.	Series
Sez. Un.	Sezioni Unite (Joint Session at the Court of Cassation, Italy)
SGECC	Study Group on a European Civil Code
S.Iur	Studia Iuridica (Coimbra), cited by year and page
SME	Small or medium enterprise
sec(s).	Section(s)
STJ	Supremo Tribunal de Justiça (Supreme Court of Portugal)
STS	Sentencia del Tribunal Supremo (Decision of the Supreme Court of Spain)
subsec(s).	Subsection(s)
subtit(s).	Subtitle(s)
suppl.	Supplement
TC	Tribunal Constitucional (Constitutional Court of Portugal)
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
Themis	Themis Revista de Direito (Lisbon), cited by volume, year and page
TI	Temas de Integração (Coimbra), cited by number, year and page
tit(s).	Title(s)
TPR	Tijdschrift voor Privaatrecht (Ghent/Leuven), cited by year and page
tranl(s).	Translation(s)
TuLLRev	Tulane Law Review (New Orleans), cited by volume, year and page
UKHL	Approved judgment of the House of Lords (United Kingdom)
ULR	Utah Law Review (Salt Lake City), cited by volume, number and page
UMJLR	University of Michigan Journal of Law Reform (Ann Arbor), cited by volume, year and page
UtrLR	Utrecht Law Review (Utrecht), cited by volume, year and page
V	Versus (against)
VersRAI	Versicherungsrecht, Zeitschrift für Versicherungsrecht, Haftungs- und Schadensrecht (Karlsruhe), cited by year and page
vol(s).	Volume(s)
VVW	Versicherungswirtschaft (German publisher)
WM	Wertpapier-Mitteilungen. Zeitschrift für Wirtschafts- und Bankrecht (Frankfurt am Main/Potsdam/Essen), cited by year and page
ZERP	Zentrum für Europäische Rechtspolitik (Bremen)
ZEup	Zeitschrift für Europäisches Privatrecht (Munich), cited by number, year and page
ZfRV	Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung (Vienna), cited by year and page

ZGS	Zeitschrift für die gesamte Staatswissenschaft (Tübingen), cited by year and page
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (Heidelberg), cited by volume, year and page
ZIP	Zeitschrift für Wirtschaftsrecht (Cologne), cited by year and page
ZRP	Zeitschrift für Rechtspolitik (Frankfurt am Main), cited by volume, year and page

Part I
The Portuguese Civil Code Through the
Prism of the Draft Common Frame of
Reference (DCFR)