The Contribution Of Mixed Legal Systems To European Private Law Ius Commune Europaeum

This volume offers a thorough analysis of the establishment and the Statute of the International Criminal Tribunal for Rwanda. Furthermore, it gives insight into how the Rwanda Tribunal has operated in practice during its first ten years and it examines the case law on the three major international crimes: genocide, crimes against humanity and war crimes.

This fully revised and updated second edition of The Oxford Handbook of Comparative Law provides a wide-ranging and diverse critical survey of comparative law at the beginning of the twenty-first century. It summarizes and evaluates a discipline that is time-honoured but not easily understood in all its dimensions. In the current era of globalization, this discipline is more relevant than ever, both on the academic and on the practical level. The Handbook is divided into three main sections. Section I surveys how comparative law has developed and where it stands today in various parts of the world. This includes not only traditional model jurisdictions, such as France, Germany, and the United States, but also other regions like Eastern Europe, East Asia, and Latin America. Section II then discusses the major approaches to comparative law - its methods, goals, and its relationship with other fields, such as legal history, economics, and linguistics. Finally, section III deals with the status of comparative studies in over a dozen subject matter areas, including the major categories of private, economic, public, and criminal law. The Handbook contains forty-eight chapters written by experts from around the world. The aim of each chapter is to provide an accessible, original, and critical account of the current state of comparative law in its respective area which will help to shape the agenda in the years to come. Each chapter also includes a short bibliography referencing the definitive works in the field.

Jan Jakob Bornheim analyses the hypothesis about the inherent efficiency of common law compared to civil law. He examines key commercial property law concepts (i.e., ownership and security interests in relation to movables) and determines the characteristics of each system with regard to these. Using the Canadian experience as a model, he then takes a close look at how the two legal systems interact, arguing that efficient interaction can take place on both vertical and horizontal planes. On the vertical plane, property law would be able to interact with higher-level law (e.g., federal law in a federal state); on the horizontal plane, property laws of different jurisdictions could interact through the conflict of laws. The author also contends that equitable property rights, including constructive trusts as a response to unjust enrichment, should be governed by property law choice-of-law rules.

While the internationalisation of society has stimulated the emergence of common legal frameworks to coordinate transnational social relations, private law itself is firmly rooted in national law. European integration processes have altered this state of affairs to a limited degree with a few, albeit groundbreaking, interventions that have tended to engender resistance from various actors within European nation-states. Against that background, this book takes as its point of departure the need to understand the process of legal denationalisation within broader political frameworks. In particular it seeks to make sense of opposition to Europeanisation at this point in the evolution of European law when, despite growing nationalist attitudes, great efforts have been made to produce comprehensive legal instruments to synthesise general contract law - an area that has traditionally been solely within the ambit of nation-states. Combining insights from the disciplines of law, history and political science, the book investigates the conceptual and cultural associations between law and the nation-state, examines the impact of nationalist ideas in modern legal thought and reveals the nationalist underpinnings of some of the arguments employed against and, somewhat paradoxically, even in support of legal Europeanisation. The author's research for this book has been supported by the Hague Institute for the Internationalisation of Law.

In European legal systems, a variety of approaches to trust and relationships of trust meet the universal professionalisation of asset management services. This book explores that interface in order to seek a better understanding of the legal regulation of the entrustment of wealth. Within the methodology of the Common Core of European Private Law, the book sets out cases on the establishment and termination of management relationships, obligations of loyalty and of professionalism, and the choice of law. More specialized cases address collective investment, collective secured lending, pension funds, and securitisation. Reports on these cases from fifteen jurisdictions of the European Union tackle fundamental problems of trust law and show which legal techniques are deployed to solve them across Europe. In addition to a much-needed comparative treatment of the subject, the book discusses the scholarly setting for the issues and gives guidance on the terminology in the evolving European scene.

This book offers a thorough analysis of the establishment and the Statute of the International Criminal Tribunal for Rwanda. Furthermore, it gives insight into how the Rwanda Tribunal has operated in practice during its first ten years and it examines the case law on the three major international crimes: genocide, crimes against humanity and war crimes. The author provides a balanced judgement of the contribution of the Rwanda Tribunal towards the development of international criminal law, emphasizing its strong points, in particular the case law on genocide, but also exposing its weaknesses in terms of legal reasoning. The author also demonstrates the inherent limits of the Rwanda Tribunal due to the political and social situation within Rwanda and due to its own Statute.

Over the last decade, Europe has witnessed the emergence of a vigorous debate about the need for and the feasibility of a future European ius commune in the field of private law. This book critically discusses this debate and provides a systematic overview of the various initiatives taken and describes the fragmentary European private law that already exists (by way of European directives, international conventions, etc.).

This unique volume takes a primarily empirical perspective on the law and economics of federalism. Using cross jurisdiction variation, the specially commissioned chapters examine the effects of various state experiments in areas such as crime, welfare, consumer protection, and a host of other areas. Although legal scholars have talked about states as laboratories for decades, rarely has the law and economics literature treated the topic of federalism empirically in such a systematic and useful way.

Analysing the arrest of ships in English and Scots law in the light of the international conventions in the field this book examines the protective, security, and jurisdictional functions of arrest within the three classical domains of private international law: applicable law, jurisdiction, and the recognition and enforcement of foreign judgments.

This innovative, refreshing, and reader-friendly book is aimed at enabling students to familiarise themselves with the challenges and controversies found in comparative law. At present there is no book which clearly explains the contemporary debates and methodological innovations found in modern comparative law. This book fills that gap in teaching at undergraduate level, and for postgraduates will be a starting point for further reading and discussion. Among the topics covered are: globalisation, legal culture, comparative law and diversity, economic approaches, competition between legal systems, legal families and mixed systems, comparative law beyond Europe, convergence and a new ius commune, comparative commercial law, comparative family law, the 'common core' and the 'better law' approaches, comparative administrative law, comparative studies in constitutional contexts, comparative law for international criminal justice, judicial comparativism in human rights, comparative law in law reform, comparative law in courts and a comparative law research project. The individual chapters can also be read as stand-alone contributions and are written by experts such as Masha Antokolskaia, John Bell, Roger Cotterell, Sjef van Erp, Nicholas Foster, Patrick Glenn, Andrew

Harding, Peter Leyland, Christopher McCrudden, Werner Menski, David Nelken, Anthony Ogus, Esin Örücü, Paul Roberts, Jan Smits and William Twining. Each chapter begins with a description of key concepts and includes questions for discussion and reading lists to aid further study. Traditional topics of private law, such as contracts, obligations and unjustified enrichment are omitted as they are amply covered in other comparative law books, but developments in other areas of private law, such as family law, are included as being of current interest.

H. Patrick Glenn (1940–2014), Professor of Law and former Director of the Institute of Comparative Law at McGill University, was a key figure in the global discourse on comparative law. This collection is intended to honor Professor Glenn's intellectual legacy by engaging critically with his ideas, especially focusing on his visions of a 'cosmopolitan state' and of law conceptualized as 'tradition'. The book explores the intellectual history of comparative law as a discipline, its attempts to push the objects of its study beyond the positive law of the nation-state, and both its potential and the challenges it must confront in the face of the complex phenomena of globalization and the internationalization of law. An international group of leading scholars in comparative law, legal philosophy, legal sociology, and legal history takes stock of the field of comparative law and where it is headed.

Law and Economics is an established field of research and arguably one of the few examples of a successful interdisciplinary project. This book explores whether, or to what extent, that interdisciplinarity has indeed been a success. It provides insights on the foundations and methods, achievements and challenges of Law and Economics, at a time when both the continuing criticism of academic economics and the growth of empirical legal studies raise questions about the identity and possible further developments of the project. Through a combination of reflections on long-term trends and detailed case studies, contributors to this volume analyse the institutional and epistemic character of Law and Economics, which develops through an exchange of concepts, models and practices between economics and legal scholarship. Inspired by insights from the philosophy of the social sciences, the book shows how concepts travel between legal scholarship and economics and change meanings when applied elsewhere, how economic theories and models inform, and transform, judicial practice, and it addresses whether the transfers of knowledge between economics and law are symmetrical exchanges between the two disciplines.

In The New European Private Law, Martijn W. Hesselink presents a revised and supplemented collection of essays written over the last five years on European private law. He argues that the creation of a common private law in Europe is not merely a matter of rediscovering the old ius commune or of neutrally establishing the present 'common core' which may be codified in a European Civil Code. Rather, it is a matter of making choices, some of which may be highly controversial. In this book he discusses some of the most important choices which will have to be made with regard to culture, principles, politics, models, rights, concepts and structure in the new European private law.

Returning to a theme featured in some of the earlier volumes in the Edinburgh Studies in Law series, this volume offers an in-depth study of 'mixed jurisdictions' - legal systems which combine elements of the Anglo-American Common Law and the European Civil Law traditions. This new collection of essays compares key areas of private law in Scotland and Louisiana. In thirteen chapters, written by distinguished scholars on both sides of the Atlantic, it explores not only legal rules but also the reasons for the rules, discussing legal history, social and cultural factors, and the law in practice, in order to account for patterns of similarity and difference. Contributions are drawn from the Law Schools of Tulane University, Louisiana State University, Loyola University New Orleans, the American University Washington DC, and the Universities of Aberdeen, Strathclyde and Edinburgh.

This book brings together a number of essays on the contribution that the so-called mixed legal systems can make to the emergence of a European private law.

This book focuses on a highly significant issue in agency law: the legal situation created when an agent acts without authority.

A Study of Mixed Legal Systems: Endangered, Entrenched, or Blended takes the reader on a fascinating voyage of discovery. It includes case studies of a number of systems from across the globe: Cyprus, Guyana, Jersey, Mauritius, Philippines, Quebec, St Lucia, Scotland, and Seychelles. Each combines its legal legacies in novel ways. Large and small, in Europe and beyond, some are sovereign, some part of larger political units. Some are monolingual, some bilingual, some multilingual. Along with an analytical introduction and conclusion, the chapters explore the manner in which the elements of these mixed systems may be seen to be ‘entrenched’, ‘endangered’, or ‘blended’. It explores how this process of legal change happens, questions whether some systems are at greater risk than others, and details the strategies that have been adopted to accelerate or counteract change. The studies involve consideration of the colourful histories of the jurisdictions, of their complex relationships to parent legal systems and traditions, and of language, legal education and legal actors. The volume also considers whether the experiences of these systems can tell us something about legal mixtures and movements generally. Indeed, the volume will be helpful both for scholars and students with a special interest in mixed legal systems as well as anyone interested in comparative law and legal history, in the diversity and dynamism of law.

This is a remarkably ambitious work of scholarship. What can Europe bring to private law, and what can it take away? And how do we shape the institutional design of the governance model(s) that comprise Europe ? A stellar collection of contributors provides important fresh insights into the evolving and varied patterns according to which private law is generated in Europe. Stephen Weatherill, Somerville College, Oxford, UK The debate concerning the desirability and modes of harmonisation of European Private Law (EPL) has, until now, been mainly concerned with substantive rules. The link between rules and institutions suggests that governance of both the process of harmonisation and its outcome is necessary. This book covers various perspectives on the challenge of designing governance for EPL: the implications of a multi-level system in terms of competences, the interplay between market integration and regulation, the legitimacy of private law making, the importance of self-regulation, the usefulness of conflict of law rules, the role of intergovernmental institutions, and the aftermath of enlargement. In addressing these, the book s achievements are to successfully link two areas of scholarship that have so far remained separate, EPL and new modes of

governance, and to address institutional reforms. The contributions offer different proposals to improve governance: the creation of a European Law institute, the improvement of judicial cooperation among national courts, the use of committees for implementation of EPL. Suggesting practical institutional reforms that can improve the process of Europeanisation of private law, this book will be of great interest to scholars of law, politics, political science, sociology and economics. It will also appeal to policymakers, and members of both European institutions and national institutions dealing with European matters.

Advancing legal scholarship in the area of mixed legal systems, as well as comparative law more generally, this book expands the comparative study of the world's legal families to those of jurisdictions containing not only mixtures of common and civil law, but also to those mixing Islamic and/or traditional legal systems with those derived from common and/or civil law traditions. With contributions from leading experts in their fields, the book takes us far beyond the usual focus of comparative law with analysis of a broad range of countries, including relatively neglected and under-researched areas. The discussion is situated within the broader context of the ongoing development and evolution of mixed legal systems against the continuing tides of globalization on the one hand, and on the other hand the emergence of Islamic governments in some parts of the Middle East, the calls for a legal status for Islamic law in some European countries, and the increasing focus on traditional and customary norms of governance in post-colonial contexts. This book will be an invaluable source for students and researchers working in the areas of comparative law, legal pluralism, the evolution of mixed legal systems, and the impact of colonialism on contemporary legal systems. It will also be an important resource for policy-makers and analysts.

A Restatement of the English Law of Unjust Enrichment represents a wholly novel idea within English law. Designed to enhance understanding of the common law the Restatement comprises a set of clear succinct rules, fully explained by a supporting commentary, that sets out the law in England and Wales on unjust enrichment. Written by one of the leading authorities in the area, in collaboration with a group of senior judges, academics, and legal practitioners, the Restatement offers a powerfully persuasive statement of the law in this newly recognized and uncertain branch of English law. Many lawyers and students find unjust enrichment a particularly difficult area to master. Combining archaic terminology with an historic failure to provide a clear conceptual structure, the law remained obscure until its recent rapid development in the hands of pioneering judges and academics. The Restatement builds on the clarifications that have emerged in the case law and academic literature to present the best interpretation of the current state of the law. The Restatement will be accessible to, and of great practical benefit to, students, academics, judges, and lawyers alike as they work with this area of law. The text of the Restatement is supported by full commentary explaining its provisions and roots together with its application to real and hypothetical cases. The Restatement appears as European private law takes its first steps towards harmonization. In providing an accessible survey of the English law, the Restatement will offer an important reference point for the English position on unjust enrichment in the harmonization debates. Also appearing shortly after the United States Third Restatement on Restitution and Unjust Enrichment, this Restatement offers an interesting contrast with American law in this area.

International and supranational courts are increasingly central to the development of a transnational rule of law. Except for insiders, the functioning and impact of these courts remain largely unknown. Addressing this gap, this innovative book examines the manner in which and the extent to which international courts and tribunals contribute to the rule of law at the national, regional, and international levels. With unique insights from members of the international judiciary, this authoritative book deals with the fundamental procedural and substantive legal principles, sources, tools of interpretation, and enforcement used by the respective judicial bodies. The rule of law-focused approach offers a unique opportunity for a thorough cross-case analysis of the differences and commonalities in the essential contributions of the respective courts and tribunals to international justice. The book also includes an in-depth theoretical framework and allows for the identification of fundamental principles and commonalities, as well as differences and contrasts between the different judicial bodies. In addition to students, researchers and scholars in international law, this timely and comprehensive study of international courts and their contributions will be an enlightening resource for legal practitioners and those involved with international justice.

Are national legal cultures in Europe converging or diverging as a result of the pressures of European legal integration? Åse B. Grødeland and William L. Miller address this question by exploring the attitudes and perceptions of the general public and law professionals in five European countries: England, Norway, Bulgaria, Poland and the Ukraine. Presenting new findings, they challenge the established view that ordinary citizens and people working professionally with the law have different legal cultures. Their research in fact reveals that the attitudes of citizens in Eastern and Western Europe towards 'law-in-principle' are remarkably similar, whereas perceptions of 'law-in-practice' differ by country and often correlate with GDP per capita and country ranking in rule of law indices. Grødeland and Miller's innovative methodological approach will appeal to both experts and non-experts with an interest in legal culture, European integration, or European elite and public opinion.

The aim of this book is to discuss the need for a uniform contract law in Europe. At present it is debated to what extent uniformity of law is required from the economic perspective. The view of the European Commission seems to be that diversity of law stands in the way of a proper functioning of the internal market, but this view does not seem to be shared by business: in the reactions to the 'Communication on European Contract Law (2001), it was striking to see that most companies do not consider the present diversity to be a true barrier to trade. This book offers five different perspectives on the need for a uniform contract law. These perspectives include economics, behavioral law and economics, psychology and law.

Seminar paper from the year 2006 in the subject Law - Comparative Legal Systems, Comparative Law, grade: 72%, Stellenbosch Universitiy (University of Stellenbosch, South Africa - Department for Private Law), course: Comparative Private Law, 27 entries in the bibliography, language: English, abstract: This paper is aimed at presenting why, in the author's opinion, mixed legal systems are not likely to be in a transitory stage in either the Civil or Common law direction and will not end up as one of the two "classical" legal ways. Rather, they will extend their borrowing and transplanting effort and strive for the "perfect rule" among the available rules in existing Civil law just as all Common law systems do if they do not in a specific area come up with a striking and creative new solution. This awards them a great potential to serve as a role-model when harmonization and unification of law is on the agenda or when the two classical eurocentric legal families have reached stagnation and need inspiration.

Some parts of this publication are open access, available under the terms of a CC BY-NC-ND 4.0 International licence. Chapters 2, 4, 10, 47 and 49 are offered as a free PDF download from OUP and selected open access locations. The International Criminal Court is a controversial and important body within international law; one that is significantly growing in importance, particularly as other international criminal tribunals close down. After a decade of Court practice, this book takes stock of the activities of the

International Criminal Court, identifying the key issues in need of re-thinking or potential reform. It provides a systematic and in-depth thematic account of the law and practice of the Court, including its changes context, the challenges it faces, and its overall contribution to international criminal law. The book is written by over forty leading practitioners and scholars from both inside and outside the Court. They provide an unparalleled insight into the Court as an institution, its jurisprudence, the impact of its activities, and its future development. The work addresses the ways in which the practice of the International Criminal Court has emerged, and identifies ways in which this practice could be refined or improved in future cases. The book is organized along six key themes: (i) the context of International Criminal Court investigations and prosecutions; (ii) the relationship of the Court to domestic jurisdictions; (iii) prosecutorial policy and practice; (iv) the applicable law; (v) fairness and expeditiousness of proceedings; and (vi) its impact and lessons learned. It shows the ways in which the Court has offered fresh perspectives on the theorization and conception of crimes, charges and individual criminal responsibility. It examines the procedural framework of the Court, including the functioning of different stages of proceedings. The Court's decisions have significant repercussions: on domestic law, criminal theory, and the law of other international courts and tribunals. In this context, the book assesses the extent to which specific approaches and assumptions, both positive and negative, regarding the potential impact of the Court are in need of re-thinking. This book will be essential reading for practitioners, scholars, and students of international criminal law.

A Study of Mixed Legal Systems: Endangered, Entrenched, or Blended takes the reader on a fascinating voyage of discovery. It includes case studies of a number of systems from across the globe: Cyprus, Guyana, Jersey, Mauritius, Philippines, Quebec, St Lucia, Scotland, and Seychelles. Each combines its legal legacies in novel ways. Large and small, in Europe and beyond, some are sovereign, some part of larger political units. Some are monolingual, some bilingual, some multilingual. Along with an analytical introduction and conclusion, the chapters explore the manner in which the elements of these mixed systems may be seen to be ’entrenched’, ’endangered’, or ’blended’. It explores how this process of legal change happens, questions whether some systems are at greater risk than others, and details the strategies that have been adopted to accelerate or counteract change. The studies involve consideration of the colourful histories of the jurisdictions, of their complex relationships to parent legal systems and traditions, and of language, legal education and legal actors. The volume also considers whether the experiences of these systems can tell us something about legal mixtures and movements generally. Indeed, the volume will be helpful both for scholars and students with a special interest in mixed legal systems as well as anyone interested in comparative law and legal history, in the diversity and dynamism of law.

This book analyses EU food law from a regulatory, economic and managerial perspective. It presents an economic assessment of strategies of food safety regulation, and discusses the different regulatory regimes in EU food law. It examines the challenges of food safety in the internal market as well as the regulatory tools that are available. The book’s generic theorising and measurement of regulatory effects is supplemented by detailed analysis of key topics in food markets, such as health claims, enforcement strategies, and induced risk management at the level of the organizations producing food. The regulatory effects discussed in the book range from classical regulatory analysis covering e.g. effects of ex-ante versus ex-post regulation and content-related versus information-related regulation to new regulatory options such as behavioral regulation. The book takes as its premise the idea that economic considerations are basic to the design and functioning of the European food supply arena, and that economic effects consolidate or induce modification of the present legal structures and principles. The assessments, analyses and examination of the various issues presented in the book serve to answer the question of how economic theory and practice can explain and enhance the shaping and modification of the regulatory framework that fosters safe and sustainable food supply chains. ? ?

Explores the law on rights of personality in Scotland compared to other jurisdictionsTaking a comparative perspective, this book explores the trends and issues affecting the law on rights of personality in jurisdictions drawn from the families of common law, civilian law, and mixed legal systems. The main focus is on the private law of personality rights, with due regard paid to the impact of constitutional legislation and other instruments protecting human rights.

National judges are expected to function as decentralized European Union judges upholding European Union law in national cases when necessary. For this purpose, the European legislators and the European Court of Justice have developed a number of legal principles and mechanisms which lay down what is expected of national judges concerning the application of European Union law. These expectations are quite high and may not necessarily reflect how European Union law is applied in practice. To better understand how national judges experience the application of European Union law in their daily work and what they think and know about their role as European Union judge, the author of this contribution together with a number of colleagues applied a mixed method approach using a questionnaire as well as narrative interviews. Moreover, the research had a comparative element as judges from the Netherlands and the German state (Land) of North Rhine-Westphalia were the object of the research. Applying mixed methods was a very fruitful approach which gave us insight into the legal consciousness of national judges with regard to European Union law, meaning their experiences with knowledge of and attitudes toward the law of the European Union. The following short description of the research process is meant as an inspiration for students to do their own empirical research in general and to use mixed methods in particular. It addresses the practical difficulties I experienced while doing post-doc research.

What does doing comparative law involve? Too often, explicit methodological discussions in comparative law remain limited to the level of pure theory, neglecting to test out critiques and recommendations on concrete issues. This book bridges this gap between theory and practice in comparative legal studies. Essays by both established and younger comparative lawyers reflect on the methodological challenges arising in their own work and in work in their area. Taken together, they offer clear recommendations for, and critical reflection on, a wide range of innovative comparative research projects.

Globalization of legal traffic and the inherent necessity of having to litigate in foreign courts or to enforce judgments in other countries considerably complicate civil proceedings due to great differences in civil procedure. This may consequently jeopardize access to justice. This triggers the debate on the need for harmonization of civil procedure. In recent years, this debate has gained in importance because of new legislative and practical developments both at the European and the global level. This book discusses the globalization and harmonization of civil procedure from the angles of legal history, law and economics and (European) policy. Attention is paid to the interaction with private law and private international law, and European and global projects that aim at the harmonization of civil procedure or providing guidelines for fair and efficient adjudication. It further includes contributions that focus on globalization and harmonization of civil procedure from the viewpoint of eight different jurisdictions. This book is an unique combination of theory and practice and valuable for academic researchers in the area of civil procedure, private

international law, international law as well as policy makers (national and EU), lawyers, judges and bailiffs.
The Europeanisation of European Private Law (EPL) is an ongoing process that has gained momentum with the communautarisation of judicial cooperation in civil and commercial matters with the Amsterdam Treaty. This work examines the governance structure of EPL. It proves that more can be achieved towards the Europeanisation of private law through a new approach involving innovative modes of governance in EPL. In order to test this hypothesis, it is necessary to look at this exercise from three different angles. The first angle provides a study about the tools and the context with which one can further Europeanise private law and bridge the gaps between the main legal families, common law and civil law. The second angle encompasses a study of what has and what has not been achieved in the development of EPL by looking at both EU and non-EU initiatives. The final angle then examines the role of governance in the future development of EPL. As such, this study confirms that the further Europeanisation of EPL requires a multi-level mode of governance, confirming the traditional supra-national Community Method mode of governance in EPL with the introduction of intra-governmental innovative methods in EPL such as the Open Method of Coordination (OMC) and soft-law. These innovative modes, together with the traditional mode of governance, can take forward the development of EPL so that it can better serve the needs of the European legal community in the future.
This comprehensive volume comprises original essays by authors well known for their work on the European Union. Together they provide the reader with an economic analysis of the most important elements of EU law and the mechanisms for decisions within the EU. The Handbook focuses particularly on how the development of EU law negotiates the tension between market integration, national sovereignty and political democracy. The book begins with chapters examining constitutional issues, while further chapters address the establishment of a single market. The volume also addresses sovereign debt problems by providing a detailed analysis of the architecture of the EU's monetary institutions, its monetary policy and their implications. The depth and breadth of the Handbook's coverage make it an essential reference for students, scholars and policymakers interested in the complexities of the European Union.
Bijuralism is the coexistence of two or more legal systems or subsystems within a broader legal order. Issues addressed in papers and comments in this volume carry important implications for legal education and for a furthering of our understanding of bijuralism and multijuralism.
Europe has known very different systems of company laws for a long time. These differences do not only pertain to the board structures of public companies, where single-tier and two-tier structures can be distinguished, they also pertain to the principles of fixed legal capital. Fixed legal capital is not a traditional ingredient of English and Irish company law and had to be incorpo-rated into these legal systems (only) for public limited companies according to the Second European Company Law Directive of 1976. Both jurisdictions have never really embraced these rules. Against this background, the British Accounting Standards Board (ASB) and the Company Law Centre at the British Institute of International and Comparative Law (BIICL) have initiated and supported a study of the benefits of this legal system by a group of experts led by Jonathan Rickford. The report of this group has been published in 2004. Its result was that legal capital was costly and superfluous; hence, the Second Directive should be repealed. The British government has adopted this view and wants the European Commission to act accordingly. Against this background a group of German and European company law experts, academics as well as practitioners, have come together to scrutinise sense and benefits of fixed legal capital and all its specific elements guided by the following questions: What is the relevant legal concept supposed to achieve? What does it achieve in reality? What criticisms are there? Which proposals or alternatives are available? From the outset the group of experts has endeavoured to cooperate with foreign colleagues, which resulted in very fruitful and pleasant exchanges. This volume contains, besides an executive summary of the results, 16 essays on specific aspects of legal capital in Germany covering also neighbouring fields of law (e.g. accounting, insolvency);7 reports on fixed legal capital in other jurisdictions (France, Great Britain, Italy, the Netherlands, Poland, Spain and the U.S.A.) addressing the same questions as the essays on German law. The British initiative disapproves of the Second Directive. The Directive does only deal with public limited companies in Europe, which is reflected in the analysis presented here. It is only concerned with the fixed legal capital of public limited companies, not with capital issues of private companies. The study has arrived at a result that differs completely from that of the Rickford group. It verifies the usefulness of the concept of fixed legal capital and wishes to convince the European Commission of the benefits of the Second Company Law Directive.
The first of a series on European Union Law, it provides a detailed overview of the development of a new European Common Law. The authors deal with the transposition of concepts and the problem of translation. Each chapter is accompanied by a bibliography in Italian as well as in English, French and German suggesting further reading in each area.
Are mixed legal systems necessarily systems in transition, or can they achieve stability?Do they remain mixes of Civil and Common law, or can they become creative sources of their own distinctive type of rules?GRIN Verlag
This book aims to provide original views on and insight into mixed legal systems in general, and some mixed legal systems and ongoing mixes in particular. The hope is that the analyses to be found in the eleven contributions will be helpful for all who have a general interest in comparative law and a special interest in mixed legal systems.