Kåre Lilleholt:

Comparative Private Law

Autumn 2011
Topic – requirements

• Model rules of European contract Law
  – presentation of the DCFR and the Feasibility Study
  – presentation of selected rules of the DCFR

• Achievement requirements
  – International and European on-going work towards a harmonised contract law
  – The role of good faith in the interpretation and performance of contracts; the liability for non-performance; the remedies against non-performance
Texts

Draft Common Frame of Reference (DCFR)
Feasibility Study
from the Expert Group May 2011
“work-in-progress” by Commission July 2011

Consumer Rights Directive
proposal 2008
agreement Parliament and Council June 2011
formal decision September?
Why model rules

- Contract law varies from country to country
- Choice of law (private international law)
- Uniform rules (CISG)
- Harmonisation
  - EU directives and regulations
  - model rules as “tool-box”
  - standard terms of contract
  - optional instrument
Earlier texts

- Principles of European Contract Law (Lando Principles)
- Unidroit Principles of International Commercial Contracts
- Several texts by academic groups
Political documents

- Commission’s Action Plan 2003
- Research project (CoPECL) 2005
- Expert Group appointed 2010
DCFR

• Final version 2009
  – Study Group on a European Civil Code
  – Acquis Group
• French texts on European contract law 2008
DCFR – contents

• Book I General provisions
• Book II Contracts and other juridical acts
• Book III Obligations and corresponding rights
• Book IV Specific contracts and the rights and obligations arising from them
• Book V Benevolent intervention in another’s affairs
• Book VI Non-contractual liability arising out of damage caused to another
• Book VII Unjustified enrichment
• Book VIII Acquisition and loss of ownership in movables
• Book IX Proprietary security rights in movable assets
• Book X Trusts
Character of the DCFR

• Academic text (black letter rules, comments, comparative notes)
• No official status
• A restatement of European private law or model rules?
The Feasibility Study – overview

• Part I Introductory provisions
• Part II Making a binding contract
• Part III Assessing what is in the contract
• Part IV Obligations and remedies of the parties to a sales contract
• Part V Obligations and remedies of the parties to a related services contract
• Part VI Damages, stipulated payments for non-performance and interest
• Part VII Restitution
• Part VIII Prescription
Existing EU contract law

• Mainly consumer law
  – Directives concerning contract law
  – Regulations concerning passengers’ rights

• Minimum or maximum harmonisation?
  – transaction costs?
  – consumer confidence?
  – consumer protection?
Debate

- Legitimacy?
- Need?
- Possible?
- Pluralism?
- Social justice?
- Optional instrument?
- Modern?