

Introduction to Law

Jaap Hage
Antonia Waltermann
Bram Akkermans
Editors

Introduction to Law

Second Edition

 Springer

Editors

Jaap Hage

Foundations and Methods of Law
Maastricht University Faculty of Law
Maastricht, The Netherlands

Antonia Waltermann

Maastricht University
Maastricht, The Netherlands

Bram Akkermans

Private Law
Maastricht University Faculty of Law
Maastricht, The Netherlands

ISBN 978-3-319-57251-2 ISBN 978-3-319-57252-9 (eBook)
DOI 10.1007/978-3-319-57252-9

Library of Congress Control Number: 2017949293

© Springer International Publishing Switzerland 2014, 2017

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Preface

The *Introduction to Law* that you are now holding in your hands is special in the sense that it introduces students to law in general and not to the law of one specific jurisdiction. It has been written with two goals in mind. First, this book is meant to be used in the course Introduction to Law of the Maastricht European Law School. This course aims to provide law students with the global knowledge of the basic legal concepts, elementary philosophy of law, and main fields of law. Since the European Law School does not exclusively focus on the law of one particular European jurisdiction, there is a need for an introductory course that also abstracts from the law of specific jurisdictions.

Second, and perhaps more importantly, this book reflects a special way of looking at legal education. We believe that it is of crucial importance for lawyers to be aware of the different ways in which societal problems can be solved and to be able to argue about the advantages and disadvantages of different legal solutions. Being a lawyer involves, on this view, being able to reason like a lawyer, even more than having detailed knowledge of particular sets of rules. The present *Introduction to Law* reflects this view by paying explicit attention to the functions of rules and to ways of reasoning about the qualities of different legal solutions. Where «positive» law is discussed, the emphasis is on the legal questions that must be addressed by a field of law and on the different kinds of solutions that have been adopted by—for instance—the common law and the civil law tradition. The law of specific jurisdictions is mainly discussed by way of illustration of a possible answer to, for instance, the question when the existence of a valid contract is assumed.

This is the second edition of the book. The list of persons who deserve gratitude for their contributions to the present and earlier editions has become too long to mention in full. Therefore we will confine ourselves to those whose role has been particularly important for this second edition. The chapter on tort law is based on an original text written by Gerrit van Maanen, and its present version has benefited from extensive comments by Cees van Dam. Sjoerd Claessens improved the chapter on the law of Europe. Daniel Hannappel has taken care of the format of the text, and Rebecca Kumi has improved the quality of the English. Last but not least, thanks go to all the students and tutors who used this book in our Maastricht Introduction to Law course and reported on their findings.

The editors of *Introduction to Law* are interested in your opinion of this book. We therefore invite you to send comments, suggestions, and questions to jaap.hage@maastrichtuniversity.nl.

Jaap Hage

Antonia Waltermann

Bram Akkermans

Maastricht, The Netherlands

February 2017

Contents

| | | |
|----|--|-----|
| 1 | Sources of Law | 1 |
| | <i>Jaap Hage</i> | |
| 2 | Legal Reasoning | 21 |
| | <i>Jaap Hage</i> | |
| 3 | Basic Concepts of Law | 33 |
| | <i>Jaap Hage</i> | |
| 4 | The Law of Contract | 53 |
| | <i>Jan Smits</i> | |
| 5 | Property Law | 79 |
| | <i>Bram Akkermans</i> | |
| 6 | Tort Law | 109 |
| | <i>Jaap Hage</i> | |
| 7 | Criminal Law | 129 |
| | <i>Johannes Keiler, Michele Panzavolta, and David Roef</i> | |
| 8 | Constitutional Law | 165 |
| | <i>Aalt Willem Heringa</i> | |
| 9 | Administrative Law | 201 |
| | <i>Chris Backes and Mariolina Eliantonio</i> | |
| 10 | The Law of Europe | 229 |
| | <i>Jaap Hage</i> | |
| 11 | Tax Law | 251 |
| | <i>Marcel Schaper</i> | |
| 12 | International Law | 277 |
| | <i>Menno T. Kamminga</i> | |
| 13 | Human Rights | 303 |
| | <i>Gustavo Arosemena</i> | |

| | | |
|-----------|--|------------|
| 14 | Elements of Procedural Law | 331 |
| | <i>Fokke Fernhout and Remco van Rhee</i> | |
| 15 | Philosophy of Law | 359 |
| | <i>Jaap Hage</i> | |
| | Supplementary Information | |
| | Index | 385 |

Contributors

Bram Akkermans

Maastricht European Private Law
Institute (M-EPLI),
Maastricht University
Maastricht, The Netherlands
b.akkermans@maastrichtuniversity.nl

Gustavo Arosemena

Maastricht University
Maastricht, The Netherlands
gustavo.rosemena@maastrichtuniversity.nl

Chris Backes

Utrecht University
Utrecht, The Netherlands
c.w.backes@uu.nl

Mariolina Eliantonio

Maastricht University
Maastricht, The Netherlands
m.eliantonio@maastrichtuniversity.nl

Fokke Fernhout

Maastricht University
Maastricht, The Netherlands
f.fernhout@maastrichtuniversity.nl

Jaap Hage

Maastricht University
Maastricht, The Netherlands
jaap.hage@maastrichtuniversity.nl

Aalt Willem Heringa

Maastricht Montesquieu Institute
Maastricht University
Maastricht, The Netherlands
aw.heringa@maastrichtuniversity.nl

Menno T. Kamminga

Maastricht Centre for Human Rights
Maastricht University
Maastricht, The Netherlands
m.kamminga@maastrichtuniversity.nl

Johannes Keiler

Maastricht University
Maastricht, The Netherlands
johannes.keiler@maastrichtuniversity.nl

Michele Panzavolta

Katholieke Universiteit Leuven
Leuven, Belgium
michele.panzavolta@kuleuven.be

David Roef

Maastricht University
Maastricht, The Netherlands
david.roef@maastrichtuniversity.nl

Marcel Schaper

Maastricht University
Maastricht, The Netherlands
mgh.schaper@maastrichtuniversity.nl

Jan Smits

Maastricht European Private Law
Institute (M-EPLI)
Maastricht University
Maastricht, The Netherlands
jan.smits@maastrichtuniversity.nl

Remco van Rhee

Maastricht European Private Law
Institute (M-EPLI)
Maastricht University
Maastricht, The Netherlands
remco.vanrhee@maastrichtuniversity.nl