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Concurrence in European Private Law

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Stellingen behorende bij het proefschrift

CONCURRENCE IN EUROPEAN PRIVATE LAW

van Ruben de Graaff

1. If we wish to understand the relationship between concurrent rights and duties, our focus should be on the legal relationships between persons and not on the institutional or hierarchical structure of the legal system (section 1.2).
2. Whether a rule affects the scope of application of another rule is a question of interpretation which cannot be answered on the basis of the formal relationship between the rules alone (sections 2.4, 4.5, 5.2, 6.3-6.5, 6.8).
3. When determining the relationship between legal rules, we should start from the premise that each rule, however founded, should be realised to the greatest possible extent (sections 2.5, 4.5, 5.2-5.4, 6.2-6.5).
4. If multiple rules are applicable concurrently to a relationship between private individuals, an individual may, in principle, choose the rule or rules which appear to him to be the most advantageous (sections 2.5, 5.3-5.4, 6.2-6.5).
5. The view that a violation of one of the provisions governing the free movement of persons and services automatically and inevitably constitutes a violation of the general prohibition of all discrimination on grounds of nationality can no longer be maintained (section 5.2.4).
6. Contrary to what Prechal contends, the basic components of Hohfeld's scheme of correlatives – claims and powers – are familiar to lawyers across Europe (section 1.3).
7. For all its emphasis on primacy and pre-emption, Union law leaves more room to national laws than is often imagined.
8. Courts across Europe are accused of judicial activism too readily.
9. Courses and textbooks on the law of obligations can no longer avoid dealing with the obligations flowing directly from the written and unwritten body of primary and secondary Union law.
10. The standards of reasonableness and fairness, deeply ingrained in the fabric of the Dutch Civil Code, enable the Dutch courts to provide rights more generous than those guaranteed by the European Convention on Human Rights.
11. A PhD thesis is one of the rare things one can control in life.
12. A PhD candidate should take as many holidays as possible.