Editorial

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Private law is the branch of law governing relationships horizontally between individuals and/or legal entities as companies. However, private law is not limited to regulating these private relationships alone. In recent years, private law has expanded its role in shaping social interactions by also incorporating or incentivising societal desiderata, such as the protection of human rights in global value chains or the protection of the environment. This extended role of private law has become even more prominent by means of an increasing awareness of vulnerability.

Vulnerability permeates various aspects of our society, affecting different meta-levels – i.e. individuals, communities, countries and (global) ecosystems. Private law intersects with vulnerability in numerous ways, particularly concerning issues such as consumer protection, employment rights, digital rights or access to justice. Concerning the goal of consumer protection, contract law and tort law are essential, safeguarding consumers against exploitation and ensuring fair treatment in transactions. Employment law, another vital aspect of private law, helps to mitigate vulnerabilities in the workplace by establishing rights and protections for workers. Even companies can be vulnerable – if they are competing on a playing field with stronger competitors. While companies of some jurisdictions must obey high standards of protection, these rules may not apply in other jurisdictions; consequently, companies from those other jurisdictions may secure a competitive advantage. Vulnerable populations, including marginalised communities and low-income individuals, often face structural barriers in accessing justice and in exercising their legal rights. Additionally, the rapid advancements of technology pose new challenges to society, such as data privacy concerns and monopolistic exploitation. These require innovative legal frameworks within the private law domain. At the same time, the growing awareness of sustainability calls for new ways to use private law also as an instrument to preserve the eco-system. Hence, in the years to come, it will be interesting to see how private law can expand into the domain of sustainability and which doctrinal developments private law will undergo.

This special issue originates from a conference of the Private Law Consortium held at the City University of Hong Kong entitled 'Private Law and the Problems of Vulnerability and Sustainability' (4-5 May 2023). The articles explore different dimensions of vulnerability and sustainability.

In 'Artificial Intelligence, Neuroscience and Emotional Data. What Role for Private Autonomy in the Digital Market?', Tommaso DE MARI CASARETO DAL VERME elucidates the new forms of consumer vulnerability due to big data and artificial intelligence. As big tech can harness big data to engage in 'AI emotional marketing', which targets the psychological and emotional vulnerabilities of consumers, this is an area of concern. The author investigates whether the existing legal norms in the EU are adequate to address such practices in the digital market and suggests how the autonomy of vulnerability may receive enhanced protection.

In 'Doing Business in a World of Goliaths. Power Imbalances and Economic Dependency in Platform-To-Business Relations', Samuel SCANDOLA explores how businesses can be vulnerable when they deal with digital platforms. SCANDOLA points out where EU regulation is lacking, how Member States have adopted abuse of economic dependence regulations to address the problem and argues for how EU regulation can be harnessed to deal more effectively with the vulnerabilities identified.

In 'Faith-based Investing, Stewardship, and Sustainability: A Comparative Analysis', Petrina TAN Tjin Yi explores how faith-based investing uses the autonomy afforded by private law to advance sustainability goals. In an interesting comparative study spanning the practices of the Catholic Church, the Church of England and Islam, TAN investigates the context in which faith-based investing occurs to tease out the convergences and divergences. The author also identifies the opportunities and challenges presented by faith-based investing for advancing sustainability.

A change in the environment can upset the assumptions underlying agreement and render parties vulnerable to lawsuits for non-performance despite the absence of fault. Alexander LOKE examines the common law doctrine of frustration in the context of Hong Kong leases impacted by Covid-19, while DING Chunyan's empirical study reveals the nuances of the change of circumstances doctrine as it operates in Mainland China.

In 'The frustration doctrine and leases: lessons from the Hong Kong Covid-19 litigation', Alexander LOKE interrogates the reasons behind the failure of the frustration argument even though the income-generating capacity of the leased properties was severely affected. LOKE argues that the judicial decisions demonstrate the impor-

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tance of characterising the nature of the contract and that embedded within the characterisation exercise are normative choices relating to how the risks should be distributed in lease agreements. Apart from their precedential value for other common law jurisdictions, the decisions demonstrate how the 'construction' of the pattern of risk distribution in a contract goes beyond the parties' intentions and that the judicial construction of risk distribution can involve a normative dimension.

In 'Retaining Contractual Equilibrium through the Doctrine of Change of Circumstances: What Can Be Learned from Chinese Experiences?', DING Chunyan shares her insights from examining 5,391 judicial decisions relating to the change in circumstances doctrine in the period 2009 to 2023. The article systematically analyses the analytical approaches taken in working out the change of circumstances doctrine, as well as the relationship between the related doctrines of change of circumstances, the frustration of purpose and force majeure.

The articles demonstrate that private law underpins our interactions in the modern world and highlight the need to meet the challenges presented by changes, whether technological, biological, economic or social. The underlying question addressed by all contributions is whether private law has the potential to make the necessary changes in addressing vulnerability. The articles touch upon the question of how private law can be meaningful for the balancing of interests in a situation of vulnerability in a caleidic way. That means different angles of departure are chosen to give a full picture, even though there are many more perspectives possible which could easily fill a couple of volumes of the *Erasmus Law Review*. The view taken here is with regard to how digitalisation changes the position of the citizen/consumer vis-a-vis powerful digital companies, how religious belief systems affect legal interpretation, the role of EU law for the position of the consumer in private law, and how crises (e.g. Covid-19) affect private law. All the articles underscore the hypothesis that private law is in transition. Whether this is good or bad is for the reader to judge.

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