

TABLE OF CONTENTS

Acknowledgements v

List of Contributors..... xv

A. Uzelac & C.H. van Rhee

Introduction 1

ACCESS TO JUSTICE AND LEGAL AID

F. Fernhout

Outcome-Related Fee Agreements in Europe and Hong Kong..... 13

1. Introduction 13

2. Definitions 14

3. Freedom of Contract and Fee Agreements 15

4. Arguments in Favour of or Against Outcome-Related Fees 16

5. Comparing Lawyers’ Fees in Some Western European Countries..... 19

5.1. Belgium..... 20

5.2. Denmark..... 21

5.3. Germany 22

5.4. England and Wales 23

5.5. France..... 24

5.6. Greece 24

5.7. Ireland..... 24

6. The Hong Kong Solution..... 25

7. Overview and Concluding Remarks 26

Bibliography 28

J.T. Johnsen

Vulnerable Groups at the Legal Services Market	31
1. Legal Need in the Perspective of Economic Theory	31
2. Market Conditions on the Demand Side.....	33
2.1. Deficiencies in Market Transparency	33
2.2. Some Remedies.....	34
2.3. Economic Barriers Against Market Access	35
2.4. Final Remarks on Market Conditions on the Demand Side	38
3. Market Conditions for Legal Service Providers. Restrictions on Competition	38
4. Other Delivery Models	40
Bibliography	43

I. Pushkarova

Access to Justice: Legal Aid Systems.....	45
1. Introduction	45
2. Problem Statement	45
3. England & Wales – the Global Leading Model of Legal Aid	46
4. The Chilean Experience	49
5. The Emerging Lithuanian Model	50
6. The First Steps in Bulgaria	51
7. Conclusions	52
Bibliography	53

ACCESSIBILITY BY IMPROVEMENT OF QUALITY**P. Albers**

Quality Assessment of Courts and the Judiciary: From Judicial Quality to Court Excellence.....	57
1. Introduction	57
2. Judicial and Court Quality	58
3. Underlying Values of a Court.....	59
4. The US Trial Court Performance Standards (TCPS) and Future Improvements of this Model.....	60
5. Quality Initiatives in Singapore: eJustice Scorecard	61

6.	Integral Court Quality Systems in Europe: Two Cases (the Netherlands and Finland)	62
6.1.	The Netherlands: Rechtspraak	62
6.2.	Finland: Quality Benchmarks	64
7.	European Initiatives: ‘Costa Report’ of the European Parliament, Quality Topics of the CEPEJ and the European Network of Councils for the Judiciary (ENCJ).....	65
7.1.	The European Parliament: A Quality Charter for (Criminal) Justice	66
7.2.	The CEPEJ: Quality Working Group (2007).....	66
7.3.	The European Network of Councils for the Judiciary: Working Group on Quality Management.....	68
8.	Towards a Global Framework for Court Excellence.....	69
9.	Concluding Remarks	71
	Bibliography	73

T. Domej

Efficiency in the Relationship between the Judge and the Parties:

	A Perspective on the Future Swiss Code of Civil Procedure	75
1.	Introduction	75
2.	The Role of Procedural Efficiency in the Swiss Legislative Process	76
2.1.	Unification as a Boost for Efficiency by Itself?	76
2.2.	Court Organisation	76
2.3.	Keeping Cases Away from the Courts	77
3.	Specific Procedural Rules Designed to Ensure Procedural Efficiency	78
3.1.	Introduction	78
3.2.	Control over the Formal Course of the Proceedings	79
3.3.	Duty to Ask Questions and Give Instructions.....	79
3.4.	Admissibility of Late Allegations.....	82
4.	Conclusion.....	85
	Bibliography	87

D. Heirbaut

Efficiency: the Holy Grail of Belgian Justice? Civil Procedure in Belgium (1806-2008).....

	Belgium (1806-2008).....	89
1.	Civil Procedure before the French Code de Procédure Civile	89
2.	The 1806 Code of Civil Procedure.....	90
3.	The Failure, for a Long Time, to Heed the Call from the 1831 Constitution for a New Code.....	91
4.	The 1869 Allard-Draft.....	92

5.	Other Failures	95
6.	The Conservative 1967 Judicial Code	96
7.	After 1967: Proceeding without Vision.....	100
8.	The Future: The Need of ‘Fundamentally Rethinking’	102
	Bibliography	105

G. Finocchiaro

Access to the Judiciary under the New Italian Law on the Judicial System:

	Critical Remarks	119
1.	Introduction	119
1.1.	Purpose	119
1.2.	The Ordinary Judiciary	121
1.3.	The Career Judiciary	122
1.4.	Methodology	123
2.	The Recruitment of the Ordinary Career Judges in Italy	124
2.1.	The Requirements for Entering the Judiciary	124
2.1.1.	The Competitive Examination in its 1941 Version.....	124
2.1.2.	The Introduction of the Pre-Selection Test.....	125
2.1.3.	The ‘Simplified’ Examination	127
2.1.4.	The ‘Upgraded’ Examination (the Introduction of More Selective Requirements to Sit the Examination)	129
2.1.5.	An Overall Assessment of the ‘Upgraded’ Examination for Entering the Judiciary	132
	Addendum I – The Numbers of Students in the Faculties of Law and in the Schools of Specialisation for the Legal Professions	135
	Addendum II – Synoptic Tables.....	136
	Bibliography	142

ACCESS TO JUSTICE THROUGH MEDIATION AND ARBITRATION

A. de Roo & R. Jagtenberg

	Mediation and the Concepts of Accountability, Accessibility and Efficiency	149
1.	Introduction	149
2.	Key Concepts	150
3.	Mediators.....	152
3.1.	Mediators and Accountability	152
3.2.	Mediators and Accessibility	155
3.3.	Mediators and Efficiency.....	157
4.	Judges.....	159

4.1. (Referring and Reviewing) Judges and Accountability	159
4.1.1. The Judge as Referral Authority.....	159
4.1.2. The Judge as Reviewing Authority.....	162
4.2. Judges and Accessibility.....	164
4.3. Judges and Efficiency.....	165
5. Concluding Observations.....	166
Bibliography	169
M. Mitrović	
Mandatory Mediation in Divorce Disputes: An Obsolete Legal Practice. Critical Overview of the Croatian Divorce System	
	173
1. Introduction	173
2. A Critical Overview of the Divorce System in Croatia	175
3. Voluntary Mediation in Divorce Disputes as a European Principle	178
4. European Union Viewpoints regarding Mediation in Divorce Disputes	179
5. Conclusion.....	181
Bibliography	183
A. Keglević	
International Commercial Arbitration. What do Parties and Arbitrators owe to Each Other?	
	187
1. Introduction	187
2. Why Arbitration?.....	188
3. The Main Duties and Obligations of the Arbitral Tribunal	189
3.1. Source of Arbitrator Powers - General.....	189
3.2. Duties Imposed by the Parties - Contractual Duties.....	190
3.3. Duties Imposed by Law - Non-Contractual Duties	191
3.3.1. Duty to Ensure Impartiality and Independence	191
3.3.2. Duty of Disclosure.....	193
3.3.3. Duty to Act with Due Diligence and Due Care.....	194
3.3.4. Liability and Immunity	195
3.3.5. Duty to Act Judicially	196
3.3.6. Duty to Render and Sign an Award	197
3.4. Ethical Duties	199
4. Main Duties and Obligations of the Parties	200
4.1. Duty to Select an Arbitrator.....	200
4.2. Presenting the Case and Imposing Duties on Arbitrators	201
4.3. Duties Related to Party Autonomy.....	202
4.4. The Power/Authority to Decide the Case	203

4.5. Duty to Pay Fees and Expenses.....	203
4.6. Duty to Act in Accordance with the Requirements of a Proper and Expeditious Conduct of Arbitral Proceedings.....	204
5. Conclusion.....	204
Bibliography	206

ACCESSING JUSTICE THROUGH EFFICIENT ENFORCEMENT

S. Petkova

Reforming Judgment Enforcement in Bulgaria.....	213
1. Introduction	213
2. Background	213
3. Choosing a Reform Path.....	214
4. Parliamentary Life and Passage of the Law.....	215
5. Preparatory Work for the Launch of the New Profession	216
6. Current State of Private Judgment Enforcement in Bulgaria	216
7. Conclusions	217
Bibliography	219

V. Rijavec

The Recovery of Debts Secured by Mortgage or Pledge in Slovenia	221
1. General Remarks	221
2. Civil Enforcement in Slovenia	221
3. Enforcement Agency.....	222
3.1. General.....	222
3.2. Slovenian System.....	223
4. Ordinary Legal Remedies in the Enforcement Procedure	223
5. Special Legal Remedies against Enforcement Orders	223
6. Actions for Setting Aside Enforcement Orders	224
7. Types of Enforcement	224
8. Types of Pledge	224
9. Pledge Arising out of a Directly Enforceable Notarial Deed.....	225
10. Types of Mortgages.....	226
11. Special Court Proceedings to Enforce a Mortgage.....	227

12. Enforcement against Real Estate under Mortgage Established by a Notarial Deed	227
13. Procedure for the Enforcement against Real Estate under Mortgage	227
14. Conclusion.....	229
Bibliography	230