Contents

1 Introduction ........................................................................................................ 1

2 Review of Current Use of the Law Merchant in Domestic and International Law .................................................... 5
   2.1 Uniform Commercial Law as Responding to a Need to Promote Uniformity on Behalf of International Trade by Purpose and Scope ................................................................. 5
   2.2 Commercial Contract Law in the Discussions of the Expert Group on the Drafting of a European Contract Law .... 8
   2.3 Special Problems of International Trade ........................................................................................................ 9
      2.3.1 ...Typically Addressed in Standard Contract Forms ................................................................................. 9
      2.3.2 ...Leading to Specialised Infrastructure in Arbitration and Public Law Initiatives ................................... 10
   2.4 Choice of Law Issues and Need for Transnational Contractual Regime .......................................................... 10
      2.4.1 Is There a Need for a Specialised Substantive Commercial Contract Law .............................................. 11
      2.4.2 If There is a Need for Uniform Commercial Contract Law How Can it be Effected Under the Current Choice of Law Regime? ........................................................................ 21
   2.5 How Can it be Effected with a Comparative Law Approach? ............................................................................. 24
      2.5.1 Example: Comparative Remedies for Breach of Contract ...................................................................... 24
      2.5.2 Good Faith ............................................................................................................................................... 25

   3.1 Introduction ............................................................................................................. 27
   3.2 Choice of Non-State and Transnational Contract Law as Lex Contractus .......................................................... 29
3.3 Choice of Law in Commercial Contracts ................. 30
3.4 Mandatory Laws and Connecting Factors From a UK
    Perspective ........................................... 31
3.5 Mandatory Laws and Public Policy .......................... 37
3.6 Economic Analysis in the Conflict of Laws .................. 39
3.7 Party Autonomy ........................................ 40
    3.7.1 Party Autonomy in Private International Law:
        What Law? ........................................... 40
    3.7.2 Public Policy and State Interest: Convergence of US
        and European Positions? .............................. 40
    3.7.3 International Antitrust Law: Extraterritoriality ......... 43
    3.7.4 Mandatory Law in International Arbitration: Unity of
        Law and State? ....................................... 46
3.8 Party Autonomy, Legitimacy and Law Enforcement .......... 48
3.9 Party Autonomy in European Contract Law: The
    Constitutionalisation Debate in Germany ................. 50
3.10 Taking a Fresh Look at Connecting Factors: The Rome II
    Regulation ............................................. 60

4 Conclusion .................................................. 65

About the Author ............................................... 67

References ...................................................... 69

Index .......................................................... 73
Does International Trade Need a Doctrine of Transnational Law?
Some Thoughts at the Launch of a European Contract Law
Heidemann, M.
2012, VIII, 74 p., Softcover
ISBN: 978-3-642-27499-2