

Introduction to Belgian Law

**General Editors of the Series: Prof. Tuğrul Ansay
& Prof. Don Wallace, Jr.**

List of the Introduction books already published are as follows:

Introduction to the Law of Israel (1995)
Introduction to Hungarian Law (1998)
Introduction to Belgian Law (2001)
Introduction to Italian Law (2002)
Introduction to the Law of the United States (second edition 2002)
Introduction to the Law of South Africa (2004)
Introduction to Swiss Law (third edition 2004)
Introduction to German Law (second edition 2005)
Introduction to Polish Law (2005)
Introduction to French Law (2008)
Introduction to Greek Law (third edition 2008)
Introduction to Turkish Law (sixth edition 2011)
Introduction to the Law of Kazakhstan (2012)
Introduction to the Law of Croatia (2014)
Introduction to the Law of Austria (2015)
Introduction to Brazilian Law (second edition 2017)

Introduction to Belgian Law

Second Edition

Edited by

Marc Kruithof
Walter De Bondt



Wolters Kluwer

Published by:

Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wklawbusiness.com

Sold and distributed in North, Central and South America by:

Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@wolterskluwer.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-6704-0

e-Book: ISBN 978-90-411-8728-4

web-PDF: ISBN 978-90-411-8729-1

© 2017 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal & Regulatory U.S., 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Website: www.wklawbusiness.com

Printed in the United Kingdom.

Editors

Marc Kruithof is Professor at Ghent University, where he teaches civil liability (torts) and comparative law. He holds a Ph.D. in Law (Ghent University, 2009), LL.M. (Yale Law School, 1986), Licentiate in Economics (Ghent University, 1985), and Licentiate in Law (Ghent University, 1983). His current research focuses on torts and on general concepts of the law of obligations. Previously, his work focused on financial services law and client protection in investment services.

Walter De Bondt is Emeritus Professor at Ghent University and at Vrije Universiteit Brussel (VUB). He holds a Ph.D. in Law (Ghent University, 1982), LL.M. (UC Berkeley, 1978), and Licentiate in Law (Ghent University, 1973). He taught courses on contracts and on comparative law. His research mainly focused on the formation of contracts, the precontractual process, the consent of the parties and the free will of a patient asking for euthanasia.

Contributors

Robert Andersen, Professor Emeritus at Université Catholique de Louvain (UCL), First President Emeritus at the Council of State of Belgium (*Conseil d'Etat – Raad van State*), Ph.D. in Law (UCL, 1977), Licentiate in Applied Economic Sciences (UCL, 1966), and Doctor in Law (UCL, 1965).

Diederik Bruloot, Professor at Ghent University, Ph.D. in Law (Ghent University, 2012), and Licentiate in Law (Ghent University, 2005).

Ignace Claeys, Professor at Ghent University, Attorney: Partner at Eubelius in Brussels, Ph.D. in Law (KU Leuven, 2002), LL.M. (University of Chicago, 1996), and Licentiate in Law (KU Leuven, 1994).

Miguel De Jonckheere, Professor at Vrije Universiteit Brussel (VUB), Ph.D. in Law (VUB, 1995), Special Licentiate in Tax Law (VUB, 1988), and Licentiate in Law (VUB, 1986).

Francis Delpérée, Member of the Belgian House of Representatives elected in 2014, Former Member of the Belgian Senate 2004–2014, Professor Emeritus at Université Catholique de Louvain (UCL), Former Assessor at the Council of State (*Conseil d'Etat – Raad van State*), Doctor Honoris Causa of universities d'Aix-Marseille III (1987), Geneve (1993), Ottawa (1993), Szeged (2002), Athens (2003) and Sud Toulon-Var (2008), Doctor in Law (Paris, 1968), and Doctor in Law (UCL, 1964).

Christian De Wulf, Professor Emeritus at Ghent University, Honorary Notary at Dendermonde, D.Phil. (Oxford University, 1963), MCL (Columbia University, 1960), Doctor in Law (Ghent University, 1959), and Licentiate in Notarial Law (1958).

Hans De Wulf, Professor at Ghent University, Ph.D. in Law (Ghent University, 2001), LL.M. (Karl-Eberhards Universität Tübingen, 1994), and Licentiate in Law (Ghent University, 1993).

Johan Erauw, Professor Emeritus at Ghent University, Attorney: Member of the Ghent Bar, Arbitrator, Honorary Dr (East China University of Politics and Law, 2005), Ph.D. in Law (Ghent University, 1979), and Licentiate in Law (Ghent University, 1972).

Dirk Heirbaut, Professor at Ghent University, Member of the Royal Flemish Academy of Belgium for Science and the Arts, Ph.D. in Law (Ghent University, 1997), Licentiate in Law (Ghent University, 1993), and Licentiate in History (Ghent University, 1988).

David Renders, Professor at Université Catholique de Louvain (UCL), Attorney: Member of the Brussels Bar, Ph.D. in Law (UCL, 2002), Bachelor in Philosophy (UCL, 1994), and Licentiate in Law (UCL, 1994).

Joëlle Rozie, Professor at University of Antwerp, Ph.D. in Law (Vrije Universiteit Brussel (VUB), 2004), and Licentiate in Law (VUB, 1997).

Vincent Sagaert, Professor at KU Leuven and at University of Antwerp, Attorney: Off Counsel at Eubelius in Brussels, Ph.D. in Law (KU Leuven, 2002), and Licentiate in Law (KU Leuven, 1999).

Patrick Senaeve, Professor at KU Leuven, Ph.D. in Law (KU Leuven, 1981), Licentiate in Political and Social Sciences (KU Leuven, 1977), and Licentiate in Law (KU Leuven, 1974).

Piet Taelman, Professor at Ghent University, Former Dean of the Ghent University Law School (2008–2014), Ph.D. in Law (Ghent University, 1994), and Licentiate in Law (Ghent University, 1982).

Sebastiaan Vandenbogaerde, Post-Doctoral Researcher at Ghent University, Ph.D. in Law (Ghent University, 2014), Master of Law (Ghent University, 2010), and Licentiate in History (Ghent University, 2006).

Willy van Eeckhoutte, Professor at Ghent University, Attorney at the Court of Cassation: Partner at Van Eeckhoutte, Taquet & Clesse in Ghent, Ph.D. in Law (Ghent University, 1985), and Licentiate in Law (Ghent University, 1975).

Mark Van Hoecke, Professor at Queen Mary University of London, Professor Emeritus at Ghent University, Ph.D. in Law (Ghent University, 1979), and Licentiate in Law (Ghent University, 1972).

Claudia Van Severen, Research Assistant at Ghent University, and Master of Laws (Ghent University, 2010).

Eddy Wymeersch, Professor Emeritus at Ghent University, Former Chairman of the Committee of European Securities Regulators (CESR), Former Chairman of the Supervisory Board of the Belgian Banking, Finance and Insurance Commission, LL.M. (Harvard Law School, 1968), and Doctor in Law (Ghent University, 1966).

Summary of Contents

Editors	v
Contributors	vii
CHAPTER 1	
The Belgian Legal Tradition: Does It Exist?	
<i>Dirk Heirbaut</i>	1
CHAPTER 2	
Basic Features of the Belgian Legal System	
<i>Mark Van Hoecke & Sebastiaan Vandenbogaerde</i>	25
CHAPTER 3	
Constitutional Law	
<i>Francis Delpérée</i>	49
CHAPTER 4	
Administrative Law	
<i>Robert Andersen & David Renders</i>	65
CHAPTER 5	
The Judicial System and Civil Procedure	
<i>Piet Taelman & Claudia Van Severen</i>	81
CHAPTER 6	
Criminal Law	
<i>Joëlle Rozie</i>	129
CHAPTER 7	
Family Law	
<i>Patrick Senaeve</i>	149

Summary of Contents

CHAPTER 8	
Successions, Donations <i>Inter Vivos</i> and Wills	
<i>Christian De Wulf</i>	187
CHAPTER 9	
Property Law	
<i>Vincent Sagaert</i>	205
CHAPTER 10	
Contract Law	
<i>Ignace Claeys</i>	227
CHAPTER 11	
Tort Law	
<i>Marc Kruithof</i>	243
CHAPTER 12	
Commercial Law and Business Transactions	
<i>Eddy Wymeersch & Diederik Bruloot</i>	285
CHAPTER 13	
Company Law	
<i>Hans De Wulf</i>	309
CHAPTER 14	
Labour and Social Security Law	
<i>Willy van Eeckhoutte</i>	353
CHAPTER 15	
The Belgian Tax System	
<i>Miguel De Jonckheere</i>	381
CHAPTER 16	
Private International Law	
<i>Johan Erauw</i>	413
Index	449

Table of Contents

Editors	v
Contributors	vii
CHAPTER 1	
The Belgian Legal Tradition: Does It Exist?	
<i>Dirk Heirbaut</i>	1
§1.01 A Belgian Legal Tradition Before Belgian Independence in 1830?	1
[A] Belgian Political History Before 1830	1
[B] The Legal History of the Southern Netherlands Before 1830	3
[1] The Middle Ages (Until the End of the Fifteenth Century)	3
[2] The Early Modern Period	4
[3] The French Period	7
[4] The Dutch Period	9
§1.02 A Belgian Legal Tradition after Belgian Independence in 1830?	9
[A] The Belgian Revolution	9
[B] The Constitution	10
[C] French Influence in the Nineteenth Century	10
[D] The Waning of French Influence	14
[1] Changes in Legal Education and Legal Science	14
[2] Social and Economic Changes	15
[3] The Rise of Dutch as a Language for Law	17
[E] A French-Speaking and a Flemish Belgian Legal Culture?	18
§1.03 The Pragmatic Attitude of Belgian Law	21
§1.04 Belgium's Contribution to Law	22
§1.05 Conclusion	23
§1.06 Selected Bibliography	23

Table of Contents

CHAPTER 2

Basic Features of the Belgian Legal System

Mark Van Hoecke & Sebastiaan Vandenbogaerde 25

§2.01	Belgian Legal Culture(s)	25
	[A] Epistemological Presuppositions: The Sources of Law	27
	[B] Methodological Presuppositions	28
	[1] Statutory Interpretation	28
	[2] Argumentation Theory	29
	[C] Ideological Presuppositions	31
	[1] Theory of the State: The Task of the Judge	31
	[2] World View of the Belgian Judge	32
§2.02	Recognised Sources of Law	34
	[A] Internal Sources of Law	34
	[1] Legislation	34
	[2] Case Law	35
	[3] Customary Law and General Principles of Law	36
	[4] Legal Doctrine	37
	[B] Influence of European and International Law	37
	[1] The Supremacy of International Law	37
	[2] Human Rights Treaties	37
	[3] European Law	38
	[4] International Law Versus the Constitution	39
§2.03	Finding the Law	40
	[A] Bibliographical Works	40
	[B] Where to Find Legislation	41
	[C] Where to Find Case Law	43
	[D] Where to Find Legal Doctrinal Writings	44
§2.04	Branches of Law	44
§2.05	Legal Education and Legal Professions	46
	[A] Legal Education	46
	[B] Legal Professions	46
	[1] Advocates	47
	[2] Notaries	47
	[3] Judges and Public Prosecutors	48

CHAPTER 3

Constitutional Law

Francis Delpérée 49

§3.01	The Constitution	49
§3.02	History	49
§3.03	Sources	50
§3.04	Influences	51
§3.05	Interpretation	51

§3.06	The Revision Procedure	53
§3.07	The First Constitutional Revisions	54
§3.08	More Recent Constitutional Revisions	55
§3.09	Basic Constitutional Data	56
	[A] Rights and Freedoms	56
	[B] Separation of Powers	57
	[C] The Imperfect Two-Chamber System	58
	[D] The Establishment of a Federal System	58
	[E] Political Decentralisation	61
§3.10	The Constitution and the European Integration	61
§3.11	Reorientation of the Constitution	62
§3.12	Constitutional Justice	62
§3.13	Revisions to Come	64
§3.14	Selected Bibliography	64

CHAPTER 4

Administrative Law

Robert Andersen & David Renders 65

§4.01	Introduction	65
§4.02	The Administrative Organisation	66
§4.03	Administrative Action	69
	[A] The Regime of Administrative Acts	69
	[B] The Status of Civil Servants and Other Public Employees	73
	[C] Public Property	75
§4.04	The Control Mechanisms of the Administrative Action	76
§4.05	Conclusion	78
§4.06	Selected Bibliography	78

CHAPTER 5

The Judicial System and Civil Procedure

Piet Taelman & Claudia Van Severen 81

§5.01	General Introduction	81
	[A] The Belgian Civil Justice System: A Brief Historical Perspective	81
	[1] The Belgian Judicial Code of 1967	81
	[2] Numerous and Significant (Ongoing) Amendments	82
	[B] Delimitation of the Subject Matter	84
	[C] Principles Governing the Proper Administration of Justice	84
	[1] Access to Justice	84
	[2] Fair Trial	85
	[3] Party Autonomy Versus Role of the Judge	86
§5.02	Structure of the Judiciary	87
	[A] Introduction	87
	[B] Organisation and Composition of the Different Courts	87

Table of Contents

	[C] High Council of Justice	90
	[D] Council of State	91
	[E] Constitutional Court	92
§5.03	Participants in the Judicial System	93
	[A] Members of the Judiciary	93
	[1] Judges	93
	[a] Nomination and Appointment	93
	[b] Incompatibilities	93
	[c] Evaluation and Discipline	94
	[d] End of Functions	94
	[e] Interest Groups and Networks	94
	[2] Court Registries	95
	[B] Public Prosecutors	95
	[C] Attorneys	96
	[1] Legal Status, Role and Duties	96
	[2] Remuneration and Fee Agreements	96
	[3] Organisation of the Profession	97
	[D] Bailiffs	97
	[1] Legal Status, Role and Duties	97
	[2] Organisation of the Profession	98
§5.04	Jurisdiction	98
	[A] Domestic Jurisdiction	98
	[1] Subject Matter Jurisdiction	98
	[a] General Principles	98
	[i] General, Specific and Exclusive Jurisdiction	98
	[ii] Functionality: Specialisation – Public Policy	99
	[b] Overview of the Jurisdiction of the Different Courts	99
	[i] First Instance Courts	99
	[ii] Appellate Courts and Court of Cassation	100
	[2] Venue (Territorial Jurisdiction)	101
	[a] General (Default) Rules	101
	[b] Specific (Mandatory and Public Policy) Rules	101
	[3] (Resolution of) Jurisdiction Conflicts	101
	[B] International Jurisdiction	102
§5.05	Proceedings	103
	[A] Access to Justice: Legal Aid, Legal Assistance and Legal Costs	103
	[1] Legal Aid and Legal Assistance	103
	[2] Legal Costs	103
	[B] Proceedings in First Instance	104
	[1] Pre-trial Settlement	104
	[2] Ordinary Proceedings	104
	[a] Initiation of Proceedings	104
	[i] Language	104

	[ii] Notice to Appear Before Court	105
	[iii] Registration by the Court	105
	[b] Progress of Proceedings	105
	[i] Adversary Proceedings	105
	[ii] Default Proceedings	108
	[3] Summary Proceedings	109
	[4] Ex Parte Proceedings	110
	[5] Collective Redress Proceedings	110
[C]	Review Proceedings	111
	[1] In General	111
	[2] Ordinary Appellate Remedies	112
	[a] Opposition	112
	[i] Admissibility	112
	[ii] Scope of Review	113
	[iii] Consequences for (Provisional) Enforcement	113
	[b] Appeal	113
	[i] Admissibility	113
	[ii] Scope of Review	115
	[iii] Consequences for (Provisional) Enforcement	115
	[3] Extraordinary Appellate Remedies	116
	[a] Appeal to the Court of Cassation	116
	[i] Admissibility	116
	[ii] Scope of Review	116
	[iii] Consequences for Enforcement	117
	[b] Third-Party Opposition	117
	[c] Revocation of Res Judicata	118
	[d] Redress Against the Judge	118
	[e] Repeal	118
§5.06	Evidence	118
	[A] Burden of Proof and Admissibility of Evidence	118
	[B] Discovery and Disclosure	119
	[C] Administration of Evidence	119
	[1] Forced Production of Documents	120
	[2] Testimony of Witnesses	120
	[3] Testimony by the Parties Themselves	120
	[4] Expert Evidence	120
	[5] On-Site Inspection by the Judge	121
§5.07	Enforcement of Judgments	121
	[A] Enforcement of Domestic Judgments	121
	[1] General	121
	[2] Leading Role for the Bailiff	121
	[3] Role of the Judge of Attachments	122

Table of Contents

	[4] Consignment	122
	[5] Unseizable Amounts and Property	122
	[6] Publicity	122
	[7] Non-compliance Penalties	123
	[B] Recognition and Enforcement of Foreign Judgments	123
§5.08	Arbitration	124
	[A] UNCITRAL Model Law	124
	[B] Arbitration Procedure	125
	[C] Arbitral Award	125
§5.09	Mediation	125
§5.10	Selected Bibliography	126
CHAPTER 6		
Criminal Law		
	<i>Joëlle Rozie</i>	129
§6.01	The Belgian Penal Code	129
§6.02	Criminal Law	130
	[A] Principle of Legality	130
	[B] Application of Criminal Law <i>Ratione Temporis</i>	130
	[C] Application of Criminal Law <i>Ratione Loci</i>	131
	[D] Application of Criminal Law <i>Ratione Personae</i>	131
§6.03	The Offence	132
	[A] Elements of the Offence	132
	[1] Material Element	132
	[2] Moral Element	132
	[a] Classical Theory	132
	[b] Theory of Legros	133
	[B] Classification of Offences	133
	[1] Tripartite Classification	133
	[2] Other Classifications	134
	[a] Classification Based on the Intrinsic Nature of the Offence	134
	[i] Political Offences	134
	[ii] Offences Committed by Means of the Press	134
	[b] Classification Based on the Material Execution of the Offence	135
	[i] Terminable and Permanent Offences	135
	[ii] Singular and Continuous (or Collective) Offences	135
	[C] Aggravating Circumstances	135
	[D] Punishable Attempt	136
	[1] Intent	136
	[2] Beginning of Execution	136
	[3] Non-completion	136

	[E] Grounds of Justification	137
	[1] General Notion	137
	[2] The Different Grounds of Justification	137
	[a] Order of Law and Command of Authority	137
	[b] Legitimate Defence	137
	[c] State of Necessity	138
§6.04	The Offender	138
	[A] Grounds of Exemption of Guilt	138
	[1] General Principles	138
	[2] Different Grounds of Exemption of Guilt	138
	[a] Duress	138
	[b] Mistake and Ignorance	139
	[B] Grounds of Irresponsibility	139
	[1] General Notions	139
	[2] The Different Grounds of Irresponsibility	139
	[a] Mentally Ill	139
	[b] Minors	140
	[C] Absolute Grounds of Excuse	141
	[D] Punishable Participation	141
	[1] General Concepts	141
	[2] Legal Ways of Participation	141
	[E] Criminal Liability of Legal Persons	142
§6.05	Punishments and Other Consequences of the Offence	142
	[A] General Principles	142
	[B] The Different Punishments	143
	[1] Principal Punishments	143
	[a] Incarceration	143
	[b] Electronic Monitoring	143
	[c] Community Service	144
	[d] Autonomous Probation	144
	[e] Fine	144
	[2] Additional Punishments	144
	[a] Special Confiscation or Forfeiture	144
	[b] Deprivation of Civil and Political Rights	145
	[c] Prolonged Detention at the Disposal of the Sentence Enforcement Court	145
	[d] Other Additional Punishments	145
	[C] Determination of Punishment	145
	[D] Sentence Enforcement	146
	[1] General Principles	146
	[2] Modalities of Execution	147
	[E] Extinction of Punishments	147
§6.06	Selected Bibliography	148

Table of Contents

CHAPTER 7

Family Law

<i>Patrick Senaeve</i>	149
§7.01 General Description of Family Law	149
[A] The Legislation	149
[B] Treaty Law	150
[C] Case Law	151
§7.02 Affiliation	151
[A] Short History	151
[B] Maternal Affiliation	152
[1] Birth Certificate	152
[2] Recognition	154
[3] Investigation of Maternity	155
[C] Paternal Affiliation	156
[1] Paternal Affiliation Within Marriage	156
[a] Establishment of Paternity	156
[b] Contestation of Paternity	157
[2] Paternal Affiliation Out of Wedlock	159
[a] Recognition	159
[i] Establishment of Affiliation	159
[ii] Contestation of the Recognition	160
[b] Establishing Paternal Affiliation Based on an Investigation	162
[D] Co-motherhood	163
[E] Rules Common to All Affiliation Actions	163
[1] Orders for Investigatory Measures	163
[2] The Effect of Judgment in Affiliation Disputes	163
[F] Action for Support Against the Procreator	164
§7.03 Parental Authority over Juveniles	165
[A] Introduction	165
[B] Cohabiting Parents	165
[1] Contents of the Rule: Joint Exercise	165
[2] Scope of Application of the Rule	166
[3] The Presumption of Consent of the Other Parent	166
[4] Case Before the Court	168
[a] Breaking a Deadlock	168
[b] Challenging Unilateral Acts of a Parent	168
[C] Non-cohabiting Parents	169
[1] General System	169
[2] Exceptional System	170
[a] The System of Exclusive Exercise	170
[b] Possibility of an ‘à la Carte’ System	171

	[3] Right of Access of the Parents	171
	[4] The Right of Supervision	172
	[5] The Right to Introduce a Case Before the Family Court	172
	[D] The Right of Audience of Juveniles	172
§7.04	Divorce	173
	[A] Introduction	173
	[1] Historical Evolution	173
	[2] Statistics	174
	[B] Divorce on the Grounds of the Irretrievable Breakdown of the Marriage	175
	[1] Conditions for Obtaining a Divorce	175
	[2] Procedure	175
	[3] Temporary Measures	176
	[4] Consequences of Divorce	176
	[a] General	176
	[b] Support after Divorce	177
	[c] The Property of the Spouses	178
	[d] The Relationships Between Parents and Children	178
	[C] Divorce by Mutual Consent	178
	[1] Requirements	178
	[2] Procedure	179
	[3] Consequences	180
§7.05	Statutory Scheme for Cohabitation	180
	[A] Introduction	180
	[B] The Legal Position of Cohabitees Before and Outside the Statutory Cohabitation Regime	181
	[1] Lawfulness of Cohabitation	181
	[2] Cohabitation Contracts	181
	[C] Legal Cohabitation	182
	[1] Scope of the Rules	182
	[2] Formal Requirements	182
	[3] Requirements	182
	[4] Exclusion of the Statutory Scheme	183
	[5] Obligation to Share Costs of Cohabitation	183
	[6] Responsibility for Debts	183
	[7] Property Relationship	183
	[8] Special Regime Regarding the Family Home	184
	[9] Inheritance	184
	[10] Adjudication of Disputes Between Cohabitees	185
	[11] Termination of the Cohabitation	185
	[12] Maintenance	185
§7.06	Selected Bibliography	186

Table of Contents

CHAPTER 8

Successions, Donations *Inter Vivos* and Wills

<i>Christian De Wulf</i>	187
§8.01 Introduction	187
§8.02 Successions	187
[A] General	187
[1] Statutory and Testamentary Devolution	187
[2] When?	188
[3] Goods Constituting the Succession	188
[4] Requirements for Entitlement to Inherit	189
[5] The Place Where the Succession Devolves	190
[6] The Prohibition to Enter into Agreements on a Succession Which Has Not Yet Devolved	190
[B] Heirs Entitled to the Succession	190
[1] The Relatives	191
[a] The Children and the Descendants	191
[b] Brothers and Sisters, Possibly Together with Parents	191
[c] Relatives in the Ascending Line	192
[d] Common Collateral Relatives (Other than Brothers and Sisters)	192
[2] The Surviving Spouse	193
[3] The Legal Cohabitant	193
[4] The Law of Succession in the Context of an Adoption	194
[5] The Right of Legal Reversion	194
[6] The Right of Succession of the Belgian State	195
[C] Acceptance and Renunciation of Succession	195
[1] The Pure and Simple Acceptance	195
[2] Renunciation	196
[3] Acceptance under Benefit of Inventory	197
[D] Settlement and Partition of Succession	197
[1] The Right to Request Partition	197
[2] The Methods of Partition	197
[a] Voluntary Partition	197
[b] Voluntary Partition under the Supervision of the Judge	198
[c] Judicial Partition	198
[3] Hotch-Pot (<i>Collatio Bonorum</i>)	199
[4] Action in Rescission of Partition	199
§8.03 Gifts and Wills	199
[A] Reserved and the Freely Disposable Portions of the Estate	199
[1] General	199
[2] The Heirs and the Size of the Reserved Portion	200

	[a] Action to Abate	200
	[b] Calculation of the Estate	200
	[c] The Abatement	201
[B]	Donations <i>Inter Vivos</i>	201
	[1] Form	201
	[2] Content	201
[C]	Wills	202
	[1] Form	202
	[2] Content	202
	[3] Revocability	202
[D]	Special Kinds of Gifts	203
	[1] Fidei-Commissum	203
	[2] Ascendants' Partition	203
	[3] Contractual Arrangement Between Spouses	203
§8.04	Selected Bibliography	204
CHAPTER 9		
Property Law		
	<i>Vincent Sagaert</i>	205
§9.01	Introduction	205
	[A] The Closed System of Property Law (<i>Numerus Clausus</i>)	206
	[B] Importance of the Nature of Property Rights	206
§9.02	Types of Goods	207
§9.03	Ownership	208
§9.04	Joint Ownership	209
	[A] Ordinary ('Accidental') Joint Ownership	210
	[B] Mandatory Joint Ownership	211
	[C] Conventional Joint Ownership	212
§9.05	Usufruct	212
§9.06	Rights of Habitation and Use	213
§9.07	Servitudes	214
	[A] Contractual Servitudes	214
	[B] Statutory Servitudes	215
§9.08	<i>Emphyteusis</i> ('Long Lease Rights')	216
§9.09	<i>Superficies</i> ('Building Right')	216
§9.10	Property Security Rights	217
	[A] Property Security Rights in Movables	217
	[1] Pledge on Corporeal Movable Goods	217
	[2] Pledge on Receivables	218
	[3] Title Retention	219
	[4] Fiduciary Transfer for Security Purposes	219
	[5] Statutory Liens	220

Table of Contents

	[B] Property Security Rights in Immovables: Mortgages and Immovable Liens	220
§9.11	Acquisition of Property Rights	221
	[A] Contractual Transfer of Property Rights	221
	[B] Acquisitive Prescription	222
	[1] General Rules	222
	[2] Protection of the Good Faith Possessor of Movables	224
	[C] Accession	224
§9.12	Features and Organisation of the Mortgage Register	225
§9.13	Selected Bibliography	226
CHAPTER 10		
Contract Law		
	<i>Ignace Claeys</i>	227
§10.01	Introduction	227
§10.02	Sources and Principal Trends	228
§10.03	The Tension Between Freedom of Contract and Mandatory Law, Including Some General Principles of Law	229
§10.04	The Life of a Contract	231
	[A] Negotiations	231
	[B] Formation of a Contract	232
	[C] Validity of a Contract	232
	[D] Content: Interpreting, Supplementing and Correcting	235
	[E] Breach, Notice and Remedies	236
	[F] End of Contracts	239
	[G] Prescription of Claims	240
§10.05	Effects of Contracts vis-à-vis Third Parties	240
§10.06	Selected Bibliography	242
CHAPTER 11		
Tort Law		
	<i>Marc Kruithof</i>	243
§11.01	Introduction	243
§11.02	Harm or Damage	244
	[A] General Concept of Recoverable Damage	244
	[1] Injury to a Legitimate Interest	245
	[2] Resulting Causal Concept of Damage	245
	[3] Types of Damage	246
	[B] Personal Damage, Mass Claims and Injury to Collective Interests	247
§11.03	Bases for Liability	248
	[A] Fault Liability	248

[1]	Liability Based on Proven Fault	248
[a]	Objective Element: Civil Wrongs	249
[i]	Negligence	249
[ii]	Violation of a Specific Legal Rule of Conduct	250
[iii]	Grounds of Justification	252
[iv]	Abuse of Right	253
[b]	Subjective Element: Culpability	254
[i]	Concept and General Rule	254
[ii]	Infants	254
[iii]	Mentally Ill	255
[2]	Vicarious Liability Based on Rebuttable Presumptions	256
[a]	Characteristics of All Vicarious Liabilities	256
[b]	Parents for Minor Children	257
[c]	Teachers for Pupils	258
[B]	Strict Liability	259
[1]	Liability for Damage Caused by Lawful Acts	259
[a]	General	259
[b]	Nuisance	259
[2]	Risk Liability	261
[a]	Vicarious Liability for Personnel	261
[i]	Masters for Servants	261
[ii]	Public Entities for Civil Servants	263
[iii]	Organisations for Volunteers	263
[b]	Liability for Harm Caused by Things	264
[i]	Defective Objects in General	264
[ii]	Collapsing Buildings	265
[iii]	Fire or Explosion in Establishments	266
[iv]	Animals	267
[C]	Liability of Legal Persons	267
[D]	Liability of Public Authorities	268
[1]	Liability in General	268
[a]	Damage Caused by the Executive Branch	268
[b]	Damage Caused in the Performance of the Judicial Function	270
[c]	Damage Caused by the Legislative Branch	270
[2]	Equal Sharing of Public Burdens	271
[E]	Immunity from Liability	271
[1]	Employees	271
[2]	Civil Servants	272
[3]	Volunteers	272
§11.04	Causation	273
[A]	The Traditional Theory: Equivalence of Conditions	273
[B]	The Legal Reality: Not Equivalence of Conditions?	274
[C]	Plurality of Liable Parties	275

Table of Contents

§11.05	Obligation Resulting from Liability: Restoration or Compensation	276
§11.06	Tort and Contract	279
§11.07	Alternative Compensation Regimes for Specific Accidents	281
	[A] General	281
	[B] Traffic Accidents	281
§11.08	Selected Bibliography	283
CHAPTER 12		
Commercial Law and Business Transactions		
<i>Eddy Wymeersch & Diederik Bruloot</i>		285
§12.01	Legal Framework for Business Activities: An Overview	285
	[A] Commercial Law	285
	[B] Economic Law	287
	[C] Civil Law	288
§12.02	Rules Exclusively Applicable to ‘Merchants’	288
	[A] Commercial Evidence	289
	[B] Joint Liability	289
	[C] Duty to Open a Bank Account	289
§12.03	Other Traditional Topics of Commercial Law	290
	[A] Disclosures	290
	[B] Commercial Courts	290
	[C] Bills of Exchange, Promissory Notes and Cheques	291
	[1] Bills of Exchange	292
	[2] Cheques	292
§12.04	Insolvency Law	293
	[A] Overview	293
	[B] Urgent Protective Measures	293
	[C] Bankruptcy	294
	[D] Reorganisations	295
	[1] Access to the Procedure	295
	[2] First Stage: Preliminary Term of Protection	296
	[3] Second Stage: Execution of the Reorganisation Plan	296
§12.05	Rules Relating to Commercial and Financial Transactions	297
	[A] Commercial Contracts	298
	[1] Commercial Agency	298
	[2] Exclusive Distributorship	300
	[3] Franchise Contracts	300
	[4] Brokers and Commission Agents	301
	[B] Rules on Combating Late Payment in Commercial Transactions	302
	[C] Credit Contracts	303
	[1] General Overview	303
	[2] Act on SME Financing	304
§12.06	Selected Bibliography	307

CHAPTER 13

Company Law

Hans De Wulf 309

§13.01	Introduction	309
[A]	Basic Concepts: The Companies Code	309
[B]	Some General Features of Belgian Company Law	311
[1]	One Company Definition, Fourteen Company Types	311
[2]	Companies Are Still Considered to Be Contracts	311
[3]	Companies Are for Profit	312
[4]	The Public SA–NV Corporate Form Is Often Used for Small, <i>De Facto</i> Closed Firms Instead of the Private SPRL–BVBA Form, but This Is Changing	313
[5]	The Influence of the European Directives: Goldplating and Creditor Protection	313
[6]	The Close Link Between Accounting and Tax Rules	314
[7]	Concentrated Ownership	314
[8]	The Importance of Shareholder Agreements	314
[9]	Little Enthusiasm for Substance Over Form	315
§13.02	Types of Companies	315
[A]	Incorporated or Not	315
[B]	Civil or Commercial	319
[C]	Listed and Public or Private	320
[D]	For Profit or Not	322
§13.03	Partnerships	322
§13.04	Corporations	326
[A]	Introduction: Cooperative Companies and Limited Partnerships by Shares	326
[B]	SA–NV and SPRL–BVBA: Public and Private Corporations as the Most Widely Used Economic Entities	329
[1]	Formation in General	329
[2]	Formation: Capital and Contributions	332
[3]	Formation: Nullity of the Company and Liability of Founders	332
[4]	Shares and Other Securities	335
[5]	Governance: General Meeting and Directors	338
[a]	General Meetings	338
[b]	Directors: Appointment, Dismissal and Powers	341
[c]	Directors' Conflicts of Interest	343
[d]	Civil Liability of Officers and Directors	344
[6]	Profits and Losses	346
[7]	Capital Movements; Capital Protection	348
§13.05	Some Private International Law Remarks: Branches of Foreign Companies	349

Table of Contents

§13.06	Dissolution and Winding Up	350
§13.07	Selected Bibliography	351
CHAPTER 14		
Labour and Social Security Law		
	<i>Willy van Eeckhoutte</i>	353
§14.01	Introduction	353
§14.02	Employment and Labour Law	353
[A]	Employment Policy	353
[1]	Stimulation of Employment	353
[2]	Recruitment and Selection	354
[3]	Finding of Work and Job Placement	354
[4]	Temporary Employment Agency Work and Hiring Out	354
[5]	Outplacement	355
[6]	Foreign Workers	355
[B]	Employment Contracts	355
[1]	Understanding, Form and Proof	355
[2]	Types of Employment Contracts	356
[3]	Terms of the Employment Contract	357
[4]	Liability	357
[5]	Suspension of the Employment Contract	358
[6]	Termination	359
[a]	Employment Law-Based Ways of Termination	359
[i]	Dismissal and Resignation: Power and Right	359
[ii]	Notice of Termination	359
[iii]	Dismissal and Resignation for Just Cause	361
[iv]	Unlawful Termination	361
[b]	Dismissal Prohibitions and Restrictions	362
[i]	Prohibition of Dismissal for Specific Reasons	363
[ii]	Protection Against Dismissal of Personnel Delegates	363
[iii]	Protection Against Manifestly Unreasonable Dismissal	364
[C]	Protection in the Execution of Work	364
[1]	Working Time Regulations	364
[2]	Night Work	365
[3]	Sunday Rest	365
[4]	Public Holidays	365
[5]	Annual Holidays	365
[6]	Well-Being at Work	366
[7]	Equal Opportunities	366
[8]	Protection of Young People and Women	367
[D]	Wages	367

	[1] The Concept of Wage and Right to Pay	367
	[2] Pay Determination	367
	[3] Wage Protection	368
[E]	Collective Labour Law	368
	[1] Social Dialogue	368
	[a] Social Partners	368
	[b] Levels of Social Dialogue	369
	[2] Collective Bargaining Agreements	370
	[3] Industrial Conflicts	371
	[4] Work Rules	372
[F]	Company Restructuring	372
	[1] Closure of Enterprise	372
	[2] Collective Dismissal	373
	[3] Transfer of Enterprise	373
§14.03	Social Security Law	374
	[A] In General	374
	[B] Social Security Provisions	374
	[1] Schemes and Benefits	374
	[a] Industrial Accidents and Professional Diseases	374
	[b] Family Allowances	375
	[c] Pensions	375
	[d] Compensation for Health Care Expenses and Work Incapacity	376
	[e] Unemployment Benefits	376
	[2] Structural Aspects	377
	[a] Field of Application	377
	[b] Financing	377
	[c] Administrative Organisation	378
	[C] Social Assistance	379
§14.04	Social Enforcement Law	379
§14.05	Selected Bibliography	379
CHAPTER 15		
The Belgian Tax System		
	<i>Miguel De Jonckheere</i>	381
§15.01	Introduction	381
	[A] The Belgian State Structure and the Tax System	381
	[1] The Constitutional Reforms	381
	[2] Constitutional Tax Powers	382
	[3] Allocated Tax Powers and Transferred Tax Proceeds	382
	[4] Some Figures	384
	[B] General Principles of Tax Law Laid Down in the Constitution	385
	[1] The Fiscal Principle of Legality	385

Table of Contents

	[2]	The Annuality Principle	386
	[3]	The Equality Principle	386
§15.02		Federal Taxes	387
	[A]	Income Taxes	387
	[1]	Introduction	387
	[2]	(Federal) Personal Income Tax	387
		[a] Tax Liability	387
		[b] Real Property Income	388
		[c] Personal Property Income	389
		[d] Professional Income	389
		[e] Miscellaneous Income	390
		[f] Tax Incentives	391
		[g] Personal Exemption	391
		[h] Tax Calculation and Tax Rates	392
		[i] Married Couples and Legal Cohabitants	392
		[ii] Tax Rates	392
		[iii] Tax Calculation	392
	[i]	Procedural Provisions	393
	[3]	Corporate Income Tax	394
		[a] Tax Liability	394
		[b] Taxable Income	395
		[c] From Accounting Result to Tax Result	396
		[i] Corrections to the Increase of Equity	396
		[ii] Tax-Free Reserves	396
		[iii] Disallowed Expenses	396
		[d] From Tax Result to Taxable Profit	397
		[i] Determining (and Splitting) the Tax Result	397
		[ii] Splitting the Tax Result	397
		[iii] Deduction of Foreign Profit and Tax-Free Components	397
		[iv] Dividend Income Deduction	398
		[v] The Notional Interest Deduction	398
		[vi] Deduction of Carry-Over Losses	399
		[vii] Investment Deduction	399
		[e] Tax Rates	399
		[f] Advance Payments	400
	[4]	Other Income Taxes	400
		[a] The Legal Entities Income Tax	400
		[b] Non-resident Income Tax	401
	[B]	Value Added Tax	401
	[C]	Customs and Excise Duties	403
§15.03		Regional Taxes	403
	[A]	Regional Taxes in the Special Finance Act	403
		[1] General	403

	[2] Inheritance Tax	403
	[3] Registration Duties and Gift Taxes	406
	[4] Real Property Withholding Tax	406
	[5] Regional Personal Income Tax	407
	[B] Proper Regional Taxes	408
§15.04	Local Taxes	409
§15.05	Selected Bibliography	411
CHAPTER 16		
Private International Law		
	<i>Johan Erauw</i>	413
§16.01	Introduction	413
§16.02	The Belgian Code of Private International Law (2004)	414
§16.03	Jurisdiction and Procedural Matters	416
	[A] International Treaties and Bilateral Conventions	416
	[B] European Union Regulations	416
	[1] The Brussels <i>Ibis</i> Regulation Covering Civil and Commercial Disputes in General and Its Parallel Treaties	416
	[2] Other EU Regulations	419
	[C] National Law on Jurisdiction of Belgian Courts	420
	[1] General Rules on International Jurisdiction	420
	[2] Specific Jurisdictional Grounds	421
	[D] <i>Lis Alibi Pendens</i> and Related Proceedings	422
	[E] Service of Process Abroad	423
	[F] Obtaining of Evidence Abroad and Rules Regarding Proof	423
	[G] European Payment Order and Small Claims Procedures	423
§16.04	International Commercial Arbitration	424
§16.05	Choice of Law or Applicable Law	425
	[A] National Law of a Person and Belgian Nationality Law	425
	[B] Persons and Family	426
	[1] Personal Status and Capacity of Persons in General	426
	[2] The Name of Persons	427
	[3] Guardianship of Children: Parental Authority – Protection of Persons	427
	[4] Marriage and Partnerships	428
	[5] Property Regime of Spouses and Partners in Cohabitation	429
	[6] Divorce and Separation	430
	[7] Legitimacy, Legitimation and Adoption	431
	[8] Maintenance Payments	432
	[C] Successions and Wills	433
	[1] Successions	433
	[2] Dispositions of Property upon Death	434
	[D] Property	435

Table of Contents

[E]	Contractual Obligations	436
[1]	EU Conflicts Law for Contracts under the Rome-I Regulation	436
[2]	Public Policy Exception and Mandatory Rules	437
[3]	Specific Contracts	438
[F]	Torts	439
[G]	Corporations	440
[H]	Insolvency	441
§16.06	Recognition and Enforcement of Foreign Documents and Judicial Decisions	442
[A]	Treaty Obligations	442
[B]	European Law of Recognition and Enforcement	443
[C]	National Law of Recognition and Enforcement	445
§16.07	Selected Bibliography	447
	Index	449

CHAPTER 4

Administrative Law

Robert Andersen & David Renders

§4.01 INTRODUCTION

Administrative law can be defined as a set of legal rules and principles which aim to regulate the organisation, the functioning and the control of the executive. The definition is broader than the one traditionally used in Belgian law. Indeed, some essential legal rules and principles are usually considered as part of constitutional law. In such a narrow conception, administrative law appears, rather, as a kind of subsidiary sector of law. It can be considered as a process of deepening of these broad rules and principles that can be found in the Constitution. While this distinction between constitutional and administrative law can be justified from a strictly didactic standpoint, it does not correspond with reality. Indeed, it is absolutely impossible to divide the whole set.

In Belgium, as in other countries, the principle of three separate powers of government – the legislative, the executive and the judiciary – is applicable. Such a separation is not absolutely complete in Belgium. The executive branch, for instance, whose essential task is to govern and administrate, also shares part of the legislative function, which consists in enacting general and abstract rules. It also shares part of the judicial function, whose aim is to settle individual disputes on the basis of legal rules.

Belgium is an '*État de droit*' (*Rechtsstaat*). The executive has to abide by the law, as do the two other branches of government. Such a concept, which is partly similar to the English 'rule of law', means that there are fixed general rules which both citizens and the government have to live by. By law, we mean here not only the hierarchically organised set of national rules (Constitution, statutes, regulations enacted by the various executive authorities, regulations enacted by local government, etc.) but also treaties and other acts of international law with (in principle) direct effects.

This sector of law is not confined to written sources but also includes general principles of administrative law that are not all contained in the Constitution. Some of

these are established by administrative courts, mainly the Council of State (*Section du contentieux administratif du Conseil d'État – Afdeling bestuursrechtspraak van de Raad van State*). The obligation of complying with the law may be seen as a brake against a would-be arbitrary administration. It is, however, not a complete restraint. If sometimes the executive has a bound power of decision (*compétence liée – gebonden bevoegdheid*) – its decisions are in a way automatic –, one must observe that usually it has a wide discretionary power of decision (*compétence discrétionnaire – discretionaire bevoegdheid*). The executive is thus legally entitled to decide whether or not it has to intervene and, if so, to choose among all the possible measures, which will be the most appropriate to achieve the objective in the general interest.

In practice, it is important to underline that the difference between bound powers of decision and discretionary powers of decision is not absolute. A single decision can be composed of elements related to bound powers of decision and others to discretionary powers. The wide room for manoeuvre which is given to the executive has led the courts to develop a certain number of tools in order to reconcile the necessity of quick and efficient administrative action with that of a minimal protection for citizens.

The executive is essentially the government, consisting of the council of ministers. To be more precise in a federal state such as Belgium, it is essentially the federal Council of Ministers and the various councils of ministers of the federated entities. These governments would not have any influence at all if they did not have at their disposal an infrastructure and an administrative organisation in order to perform their own tasks. All those tasks could not, of course, be executed by the few individuals who work closely with each minister.

§4.02 THE ADMINISTRATIVE ORGANISATION

Both at the federal level and the level of the federated entities – ‘communities’ and ‘regions’ – there are various departments. Unsurprisingly, each of them is headed by a minister who is in charge of the management and who is also responsible for the whole staff of the department. The executive decides to create and suppress departments according to the evolving requirements of community life. Their number, as well as the distribution of the tasks between them, is relatively stable. Their main task consists in preparing and executing governmental decisions especially those taken or initiated by the minister who is responsible for the department. Each department has its own civil servants and budget but does not possess legal personality. The latter is only granted to the State (i.e., the central or federal entity), the three communities and the three regions.

Although the structure of a department has become more complex, it keeps, to a large extent, its very hierarchical character. It is true that, for practical reasons, the department is composed of external services created besides its central services. Such a phenomenon, however, does not affect its hierarchical structure. The decision centre of the department is located at the central office where most important decisions have to be adopted.

The governments, assisted by the members of the minister's staff and the civil servants working for the departments, do not have the sole power of decision. Although they have to ensure that the general interest is protected, as political bodies accountable to the parliamentary assemblies, they also have to take into account the principle of provincial and municipal autonomy provided for by the Constitution. Indeed, political organisations exist at the local level. This is the application of 'territorial decentralisation' (*décentralisation territoriale – territoriale decentralisatie*). Those local authorities have their own bodies and are responsible for the management of local affairs under a system of self-government. Their autonomy is, however, not absolute. According to the constitutional repartition of competencies, regional legislation has to set up uniformly the rules of organisation and functioning of these authorities. One of the tasks of the legislature, for instance, is to determine either positively or negatively the extent of the concept of provincial or municipal interest. Such principles are thus essentially changeable concepts.

Autonomy does not mean independence. Within the limits of local interest, these political authorities are submitted to a system of supervision by a higher authority (*contrôle de tutelle – administratief toezicht*), which, at present, is usually organised and performed by the regions. This supervision aims to ensure that acts of provinces and communes are adopted without any breach of both the law and the general interest.

Provinces and communes are not only competent to rule all matters of provincial or municipal interest. They are also required by federal State, as well as by federated entities, to carry out the implementation at local level of some missions of general interest.

Such diversity also appears from a purely organisational point of view. Apart from collegial bodies, which result directly or indirectly from elections organised on the basis of universal suffrage (*conseil communal – gemeenteraad* and *collège communal – gemeentecollege* for the municipality, *conseil provincial – provincieraad* and *collège provincial – provinciecollege* for the province), these are also some individualised functions. The first example is the mayor (*bourgmestre – burgemeester*) who is appointed by the regional government, theoretically, from amongst the members of the municipal council (*conseil communal – gemeenteraad*). He performs his tasks both as the first authority of the municipality and as an agent of the central authorities. Another example is the provincial governor (*gouverneur de province – provinciale gouverneur*), who is appointed and can be dismissed *ad nutum* by the regional government. Most of his functions are related to his quality as governmental agent (*commissaire du gouvernement – regeringscommissaris*).

The federal State, communities, regions, provinces and communes are all political authorities charged with acting in the global interest of their members. It is also necessary to create other public services in order to satisfy certain specific needs and to give them some autonomy in order to perform these tasks. This is a phenomenon known as 'functional decentralisation' (*décentralisation par services – functionele of dienstgewijze decentralisatie*) appearing at the federal level, as well as at the level of the federated entities, – the three communities and the three regions – and operating both centrally and locally. Those public services exist in many different areas.

Some of them are created by a unilateral act. Others stem from an association. Regarding the former, there is a traditional distinction between *régies* (*regieën*) and public establishments (*établissements publics* – *openbare instellingen*). A *régie* can be considered as a kind of appendix to a governmental department. Although they are legal persons and can therefore benefit from legal autonomy and avoid a series of constraints, the *régies* do not have any organisational and managerial autonomy since they have to respect the hierarchical power of the relevant minister.

Organisational and managerial autonomy is the main characteristic of the *établissement public*. This autonomy, although considerable, is not absolute. There are many different *établissements publics* but for any of them, the creating authority maintains a power of control over its acts. This control is mainly exercised through specific governmental agents called '*commissaires du gouvernement*' (*regeringscommissarissen*). They have to check whether the *établissement public* respects the law and the general interest.

At the municipal level, there is a uniform model for creating some kind of the *établissement public*. This is the case for local social assistance centres (*centres publics d'action sociale* – *openbare centra voor maatschappelijk welzijn*) and parochial associations (*fabriques d'église* – *kerkfabrieken*), which are respectively organised and controlled by the communities and the regions. Such a uniform model does not exist as regards the creation of *établissements publics* either by the federal State or by the federated entities. Each legislature has the power to create, if necessary, *établissement public* within its sphere of competences and to lay down its rules of organisation, functioning and supervision.

The above-mentioned associations can be constituted either exclusively by public authorities or jointly by public authorities and private actors. In the latter case, associations are usually known as mixed economic societies (*sociétés d'économie mixte* – *gemengde ondernemingen*). It is often very difficult to determine whether such a body is a public authority or not. There is no absolute criterion capable of giving a sharp and definitive answer to the question. In this respect, courts have elaborated an empirical and pragmatic theory called '*théorie du faisceau d'indices*' whose aim is to find a body of elements identifying the public character of the association.

These associations often take very different legal shapes. Sometimes they are civil companies with a commercial form, sometimes commercial companies and sometimes non-profit associations. Legislative acts allowing the constitution of such associations often authorise derogation from ordinary company or association law in order to help the association to perform its specific missions of public service in the best way possible.

Such a phenomenon of association can also be observed at the local level. The Constitution itself allows the possible association or creation of closer relations between several municipalities or provinces on the basis of the conditions to be established by the regional legislature (Article 162 of the Constitution).

There is a final distinction worth underlining. A public service governed by a public authority is known as 'organic public service'. It is, however, also possible for a public authority to ask a private actor to manage a public service while continuing to control the situation. In such a case, a contract called 'concession' (*concession de*

service public – concessie van openbare dienst) is entered into by the public authority and the private body providing the service.

The wave of privatisations within the Member States of the EU has given a major renewal to the '*concession de service public*'. Public companies have been, one way or another, partly or completely privatised, whether with or without a right of control for the public authorities.

On the other hand, private companies may themselves, for essentially social reasons, be partly or completely taken over by the public authorities while remaining subject to ordinary law.

In addition to the traditional administration invested with a power of decision, there is also an advisory administration. The latter is usually composed of collegial bodies and is omnipresent. Its missions are varied. In some cases, it has to coordinate administrative activities trying to prevent many decision centres from acting in opposite directions. In other cases, the advisory administration acts as an expert advising the authority on the technical aspects of the decision to be adopted.

It may also demonstrate a willingness to allow the democratisation of the administration, trying through various means to involve the citizens in the administrative decision-making process. It is obvious that these different functions are not mutually exclusive and can be exercised simultaneously.

This overview of administrative institutions would be incomplete if one did not talk about independent administrative authorities. This entity derives from French administrative law and can be defined as a private person or a commission to whom a legislative act gives both the right to exercise several missions of general interest within a particular sector and a specific status making it independent. Such authorities can separately or altogether hold regulatory, executive or repressive missions, as well as the function of preventing and settling conflicts.

§4.03 ADMINISTRATIVE ACTION

[A] The Regime of Administrative Acts

The collection of bodies described in the previous section makes up a large and varied administrative machinery which produces a broad range of administrative activity. The action of the administration is unilateral in nature. Through orders and commands, the relevant authority unilaterally imposes its will on the citizens. In order to be able to do so, several privileges derogating from generally applicable law have been conferred on the administration. The first one is called '*privilège du préalable*' (*vermoeden van wettigheid*). It allows the administration to issue itself the enforceable instrument it needs in order to fulfil its missions. This instrument benefits from a presumption of legality until evidence to the contrary has been shown. Apart from a few exceptions, this privilege has a broad scope.

That is not the case for the second privilege, the '*privilège de l'exécution d'office*' (*voorrecht van de ambtshalve uitvoering*), which permits the authority to enforce acts it has itself adopted. It is therefore empowered to force the reluctant citizen to obey.

The authority can force the disobedient citizen to act under duress, with the possible use of police force, without having to obtain preliminary authorisation from the courts. This substantial privilege only exists, in the absence of specific legal rules, in emergencies and when the measure is necessary and proportional to the requirements of the general interest. In more and more situations, the authority may impose sanctions on citizens who fail to respect the order given. Besides the criminal penalties imposed by the courts, there are also administrative penalties. Unsurprisingly, many problems arise regarding the connections between these two systems of sanction.

Unilateral legal act, which is the most traditional method used by the administration to make use of the *imperium* (*gezag*), plays a key role within administrative law. Unlike other countries, Belgium has no codified non-contentious administrative procedures. The theory of unilateral administrative act has developed in the doctrinal writings. Such a theory consists in analysing the different elements of these acts, as well as in studying the principles used as references for their elaboration. The case law of the Council of State has provided legal commentators with the materials required to elaborate their theory. Increasing importance is conferred on the process of decision-making itself, i.e., to all the steps preceding the adoption of the decision.

A significant contribution to this shift in emphasis comes from the phenomenon of participation and administrative democratisation, which allows citizens, acting either individually or as representatives of various interest groups, to be involved in the adoption of the decision.

Notwithstanding the absence of any express textual basis in the Constitution or in legislation, the Council of State has elaborated a number of principles of 'good governance' (*principes de bonne administration – algemene beginselen van behoorlijk bestuur*), which must be respected by the administration when taking its decisions. The administration must prepare the decision with care so as to act with optimal knowledge of the situation. It may be required to listen to the opinion of citizens concerned by the planned decision or to call for an expert, etc. The principles of respect for rights of the defendant and cross-examination have also been highly developed.

The study of the administrative decision itself is of course also very important. A typology of unilateral administrative act has been established. The *summa divisio*, i.e., the major classification, distinguishes between individual administrative decisions and regulations. There is another major distinction between explicit and implicit decisions, the latter raising the issue of the meaning to be given to the silence of the administration.

Whatever the act, it has to be taken by a competent authority. Competence is traditionally studied from a triple point of view: the author of the act must be competent *ratione materiae*, *ratione loci* and *ratione temporis*.

Regarding the *ratione materiae* competence, one must recall that the executive partly holds the legislative function. The king at the federal national level, as well as community and regional governments at the level of the federated entities, are invested with the duty to implement legislative acts (*lois – wetten, décrets – decreten* and *ordonnances – ordonanties*) enacted by the legislative branch.

Within certain limits, they are sometimes allowed to take general measures having a broader scope than purely implementing measures.

Finally, in some fields, the Constitution offers them an autonomous power to enact general measures. This is, for instance, the case with the organisation of their own services, including the adoption of the legal ‘status’ of their civil servants.

Other authorities also have a rule-making power, either directly conferred by the Constitution (provinces and municipalities, for instance) or granted by statute (some *organismes d’intérêt public – instellingen van openbaar nut*, for instance).

There is a general principle of attributed character of competences; they have to be exercised by those to which they have been attributed. A strict application of this principle would, however, paralyse administrative action. Therefore, many acts use an attribution of competences to allow the appointed authority to delegate part of these competences. Such delegation, however, may never deprive the authority from its essential attributions.

There are also territorial restrictions to the competence (*ratione loci* competences), notably where acts of federated entities and local authorities are concerned.

Finally, one has to mention time restrictions (*ratione temporis* competence). Authorities deriving their power from an election are specifically concerned by these restrictions since their competences are normally limited to the length of their mandate.

In most cases, the administrative act is in written form with a certain number of elements, two of which merit greater attention. The first is the signature, the presence of which is the basic condition for the act’s existence. It also serves to establish the identity of the author of the act and therefore helps to determine whether he is legally competent to enact it. The signature is the best application of the adage ‘*forma dat esse rei*’; content and form join to make one only.

The second major element is the formal duty to motivate the act. The Act of 29 July 1991 related to formal motivation of administrative acts sets up as a basic principle the requirement that any individual administrative decision mention the practical and legal motives or grounds, which have been used as basis for its adoption. The motivation has to be adequate. Vague sentences and clichés are treated as a lack of formal reasoning.

Such a principle is based on several factors. First and foremost, it is intended to make decisions as clear and understandable as possible for their addressees. Once these know the reasons for the act, they are in a better position to decide whether they can bring an action against the administrative act. The reasoning thus plays a kind of inhibiting role as far as claims against administrative acts are concerned. Another benefit of the principle is that it forces the author of the act to take more care before enacting it. In this way, formal reasoning is a protection against the arbitrary exercise of power. Finally, formal reasoning facilitates the review of decisions. Such review is indeed limited to the reasons and grounds mentioned in the decision.

The principle is, however, not absolute. Derogations are allowed when disclosure of the motives or grounds of the decision endangers the external security of the State, public order, the fundamental right of privacy or when this disclosure may violate the rules regarding professional secrecy. Urgency may, however, not be invoked in order to try to avoid the duty to motivate. Under current Belgian law, general (i.e., non-individual) administrative acts, regulations, do not have to be formally motivated, except a few of them, notably in urban and environmental law.

The above-mentioned Act of 29 July 1991 gives to citizens a minimal protection in this respect. A higher degree of protection may be offered by other, specific statutes.

There is a traditional distinction between external and internal motivation of administrative acts. Besides the obligation to offer formal motivation for individual administrative decisions, another principle forces the administration to take its decisions only if they are based on grounds that can justify them both from a legal and from a practical point of view. Administrative authorities do not hold the competences in their own interest but for the general interest. They perform what is called ‘abuse of power’ (*détournement de pouvoir* – *machtafwending*) if they make use of their powers for a purpose other than the official one. The administration has satisfied its duty to offer formal motivation only if these practical and legal grounds have been indicated in the act. However, such grounds might be incorrect. The problem thus arises at the level of internal motivation. Regarding general (non-individual) acts or regulations, the grounds do not have to be indicated in the act itself but they have to exist and to be adequate. There is no act without correct grounds.

To be obligatory for the citizens, it is not sufficient that an administrative act has been correctly enacted. There is another duty of publicity. Such publicity takes different forms and often has a varying degree of intensity according to the individual or general character of the act.

It is also important to observe that Article 32 of the Belgian Constitution gives any citizen the right to access any administrative document and to get a copy of it, except where otherwise provided for by an act of Parliament. Such a system has been implemented by the legislatures. A distinction is traditionally made between active and passive publicity. The latter forces the administration to provide citizens with a certain amount of information. One can mention, for instance, the obligation to indicate on any individual administrative act the eventual possibilities of appeal. In the absence of such notification, the limitation period for bringing an action does not run. Active publicity covers the information expressly required by the citizens. Except for documents containing some private information, the citizen does not have to show any interest to obtain such information.

While restrictions may be placed upon the right of access to administrative documents, it is important to underline that such restrictions are exceptions and that, as with any exception, they are strictly interpreted. The basic principle is and must be that of unrestricted access to administrative documents.

According to a general principle of law, administrative acts may not be retroactive. This principle is, however, not absolute. It is possible for the legislature to derogate from the principle. Furthermore, the supreme administrative court, the Council of State, has also limited its application. Among these limitations, it is worth noting the theory of withdrawal of act (*théorie du retrait d’acte* – *de leer inzake intrekking van een administratieve rechtshandeling*), enabling the author of an illegal individual act to withdraw it within certain time limits in order to prevent its annulment by administrative courts.

Public authorities must be able to adapt their action according to the evolving requirements of the general interest. This imperatively justifies the existence of the

principle of mutability of administrative acts. The intensity of this principle varies according to the act's individual or general character.

Where regulations are concerned, the principle is absolute. The author of a general act must be able to modify it for the future, at any time, without any right for its addressees to require its maintenance, without prejudice to transitional provisions in the event that circumstances arise. Moreover, there is no possibility for the administration, either unilaterally or conventionally, to reject this principle except where specifically authorised by statute.

As far as decisions are concerned, the situation is more complex. Such individual acts may create rights. In this case, they may only be modified for the future and according to legally established conditions.

It has been observed that the administrative authorities usually function by means of unilateral acts. Sometimes, however, contracts may also be used. Under the influence of French administrative law, most Belgian administrative authorities make a distinction between contracts of the administration (*contrats de l'administration – door de administratie gesloten burgerrechtelijke contracten*) and administrative contracts (*contrats administratifs – administratieve contracten*). While the former resemble private law contracts, the latter are quite distinct. Their particular regime is explained not only by the existence of specific statutes in this area but also by their status within case law and legal commentary, and can be best observed in the sphere of public procurements.

[B] The Status of Civil Servants and Other Public Employees

Administrative action involves the use of human resources. Government relies on civil servants and other public employees. Usually, the situation of civil servants is characterised by the existence of a 'status' (*statut – statuut* or *rechtspositieregeling*). As a result, their legal situation is completely organised by the competent authority on a unilateral basis, through general and abstract rules that can be modified at any time in the higher interest of the service.

There is no unique status for the personnel of all public authorities. There are rather 'statuses', each taking into account the specificities and particularities existing within the civil service. Communities and regions, for instance, are largely autonomous in the organisation of the status of their civil servants. In order to establish a certain uniformity, a Royal Decree of 22 December 2000 fixed the general principles governing the administrative and pecuniary status of civil servants. It was directly applicable to the communities' and regions' civil services, as well as to the administrative agencies (*organismes publics – openbare instellingen*) that depend on them, with the exception of education staff. The sixth Reform of the State, adopted in 2014, abrogated the legal basis of this Royal Decree.

The 'status' only exists in the public sector. There is no equivalent system in the private sector, where employment relationships are essentially organised on the basis

of employment contracts. In the public sector, it is also possible to employ staff on a contractual basis but such a possibility is, at present, often restricted to specific, limited situations, such as, for example, performing highly specialised tasks or replacing temporarily absent staff.

Civil servants under status have to be recruited and selected on the basis of competitive entrance examination, which is open both to Belgian citizens and to nationals of other EU Member States. It is possible to refuse to employ the latter but only for public functions involving a direct or indirect participation of the public power. Similar exclusions may arise in relation to functions which aim at safeguarding the general interest of the State and other authorities. Such jobs require the existence of a particular relationship of solidarity with the State, as well as a reciprocity of fundamental rights and duties, which is the very basis of the relationship created by nationality.

Definite appointment is usually made after a probation period. The civil servant performs his tasks immediately after having been appointed but the official assumption of the office only takes place after having taken the oath provided for by the *Décret* of 20 July 1831. Such an oath has to be taken by all citizens responsible for any public employment or service. After appointment, the civil servant is supposed to continue his career within his original service. There is, however, a significant trend in favour of a de-compartmentalisation between the different administrations and between the different services within one single administration. In this respect, there are means to encourage civil servants' voluntary mobility and, if necessary, to impose mobility.

A promotion requires the presence of a vacancy. It also requires several conditions regarding the civil servant: seniority, favourable evaluation, success in suitability tests, good results in a competitive examination, etc.

Except for the competitive examination, where the promotions depend on the ranking, the candidates are usually selected on the basis of the grading criteria. In practice, the system of evaluation seems to have failed, most civil servants usually getting the same mark, 'very good'. Such a phenomenon is known as '*déviance du statut*'. Promotions, at least at the highest ranks, were in practice based on purely political factors. In order to achieve the long-standing goal of a depoliticised civil service, there has been, in most administrations, a reform of the system of assessment called '*évaluation*'. This has occurred both in central and local administrations.

Being a civil servant implies a certain number of rights but also certain duties, such as the duty of loyalty or the obligation of neutrality. If they fail to comply with these duties, civil servants may be submitted to disciplinary proceedings. Despite some similarities, disciplinary law is quite different from criminal law, and therefore appears as an autonomous sector of law.

Finally, it is important to mention the legislation regarding the languages to be used in administrative matters. In a multilingual country such as Belgium, these rules regulate the use of languages both within the administrative services and in the relations between those services and the citizens.

[C] Public Property

In order to fulfil its tasks, the administration not only needs human resources but also goods and materials. Some of these are subject to a particular public property regime (*régime de domanialité publique* – *domeingoederen of goederen van het openbaar domein*). Although there is some dispute between civil lawyers and administrative lawyers regarding its specific content, the public property regime is generally considered to be applicable to goods that are immediately accessible to the public, as well as to goods allocated to a public service. In the latter case, these goods have to be exclusively or essentially adapted to the functioning of the particular public service to which they are related, either by virtue of their own nature or of particular adjustments, in order to be irreplaceable.

This allocation explains why the public property regime contains some special legal privileges. Public goods are, as a result, untransferable and imprescriptible; in principle, they are also undistrainable. While conserving these general principles, Article 1412*bis* of the Judicial Code, inserted by an Act of 30 June 1994, has contributed to ending many abuses. It is now possible for creditors of public entities to attach or distrain the goods mentioned on a list established by public authorities. If such a list has not been adopted or is not satisfactory, the creditor will be allowed to attach or distrain the goods which do not appear to be obviously necessary for the public authority to fulfil its general interest tasks or to ensure the continuity of the public service. In the latter case, the public authority subject to an order of attachment or distraint may propose the replacement of the attached or distrained goods by other goods.

The public authority can authorise some private uses of goods which are part of its public property, subject to one condition. These uses must be compatible with the particular purpose or function of these goods. Such private uses can be authorised either by unilateral decision (*autorisations domaniales* – *vergunningen*) or by contract (*concessions domaniales* – *concessies van het openbaar domein*).

Other goods are part of the public entity's private property (*domaine privé*) and as such are, in the main, subject to the general civil property law regime, and can be attached or distrained subject to the conditions of the above-mentioned Article 1412*bis* of Judicial Code.

Administrative law not only deals with the legal situation of the administration's goods but also with the administrative system related to private property. Indeed, in the general interest, private property can be restricted with a varying degree of intensity. The most significant restriction is the State's eminent domain or power of expropriation (*expropriation pour cause d'utilité publique* – *onteigening ten algemene nutte*). The exercise of this power involves not merely the limitation of the right of property but a real deprivation of it. Such a serious restraint may only be justified on the grounds of public purpose. It has to occur following the conditions provided for by statute, and requires a fair and preliminary compensation (Article 16 of the Constitution). This mechanism only concerns real property and leads to a transfer of property to the appropriating authority.

'*Réquisition*' (*opeising*) is another prerogative specific to public law and different from ordinary civil law. It allows the authority, in exceptional circumstances, to commandeer all it needs in order to achieve the aim of general interest that justifies the requisition. It includes not only human resources but also properties, whether personal or real. The main difference with expropriation or compulsory purchase in the public interest is that there is no fair and preliminary compensation. This is why it would be unconstitutional to make a requisition of a building, which implies a transfer of property.

The public interest easements (*servitudes d'utilité publique – erfdiensstbaarheden van algemeen nut*) do not lead to a deprivation of real property. The right of property is limited in its exercise but does not disappear. As a result, the '*servitude d'utilité publique*' traditionally does not confer the right to compensation. Frequently, however, when the limitation creates a particularly heavy burden, the legislature sets up a specific system of compensation. The indemnity is then usually only partial. Recently, the case law of the Belgian supreme courts evolved. It establishes that an indemnity is due in order to compensate the excessive burden generated by the public interest easement if it exceeds the one that everyone must bear in the collective interest.

§4.04 THE CONTROL MECHANISMS OF THE ADMINISTRATIVE ACTION

Many control mechanisms are set up in order to ensure the respect of legality. Some of them operate inside the administrative structure and could be described as incorporated within it. Some controls are performed on the initiative of the controller. These include the controls related to the hierarchical structure within the administration, as well as the supervision by a higher authority in the system of decentralisation. Other controls are initiated after a claim by a citizen. In this case, the initial decision may be subject to review by several administrative authorities. They may sometimes set aside the initial decision. They can also be entitled to modify the initial decision or to replace it with their own decision.

External controls also exist. The executive, i.e., the collection of all administrative authorities, is subject to the control of the two other branches of government. Parliamentary assemblies exercise a political control over governmental action, and thus over administrative action. Without trying to describe completely the different instruments of political control in Belgian public law, it is interesting to note some instruments of control such as the introduction of an ombudsman, both at the federal level and that of the federated entities.

Finally, there is judicial review of administrative acts by courts. Civil courts belonging to the judicial branch of government have exclusive jurisdiction over claims related to what are referred to as 'civil rights', as opposed to 'political rights'. An important category of civil rights disputes regards the crucial question of the liability of public powers, included the liability of the administration or one of its politicians or civil servants considered individually.

In Belgian law, indeed, the liability of public authorities can be invoked on the same basis as that of private persons. Both can be ruled on by civil courts and are subject to the same system of civil liability provided for by Articles 1382 et seq. of the Civil Code. Neither executive nor administrative authorities hold any immunity or exception with regards to ordinary law.

Some particularities may, however, be mentioned in a system that has seen, until recently, many developments. Any act of the administration may lead to its liability if it is wrongful. The fault lies in any failure, even if minor, to respect a particular obligation provided for by a specific rule of law or by a general principle of law or, in the absence of such an obligation, in any error of behaviour judged by reference to the attitude that would be taken by a sufficiently conscientious and diligent authority placed in the same situation.

Except where the public authority is liable because of an anonymous fault of the service, it is usually liable because of a wrong of one or several of its personnel. The conditions for such liability originally varied on the basis of whether the member of staff has the quality of ‘organ’ (*organe – orgaan*), which requires that he or she holds or exercises part of the *imperium* of the public entity, or that of ‘subordinate’ (*préposé – aangestelde*), which does not imply such a power. However, the Act of the 10 February 2003 terminated this distinction. From then on, the public servant engaged under a status is civilly liable in case of fraud, gross fault and repetitive minor fault committed in the performance of his or her duties. The same regime is applicable to a member of the contract staff who falls within the scope of the Employment Contracts Act of 3 July 1978, whose content in this regard is almost identical to the Act of the 10 February 2003 applicable to non-contractual staff in the public sector.

If we consider the situation from the victim’s standpoint, he has the choice to claim against either the authority, or the employee, organ or subordinate, or both.

Civil courts belonging to the judiciary also have jurisdiction over disputes relating to political rights. However, for such claims, the Constitution allows the legislature to create administrative courts, which do not belong to the judicial branch of government. This, of course, has been done, notably regarding to entry, stay, permanent residence and removal of aliens, with the creation of a council for disputes regarding aliens (*Conseil du contentieux des étrangers – Raad voor vreemdelingen betwistingen*).

As far as annulment of administrative acts (*contentieux objectif – objectief contentieux*) is concerned, the highest administrative court, the Council of State has general jurisdiction to annul both individual acts (decisions) and general acts (regulations) enacted by all administrative authorities.¹ Since 1989, or more broadly 1991, it has also been possible for the Council of State to decide to suspend an act until it has ruled upon the request for annulment.

An Act of 20 January 2014 gives to the Council of State a range of tools – either new or revised – allowing it to model, one way or another, the annulment it decides. We notably note the maintenance of the effects of the annulled act, either general or

1. See also *infra* Chapter 5, §5.02 [D].

individual, the injunction to the administration and the substitution of the annulled act by the judgment delivered.

Another Act, also adopted at the beginning of 2014, gives the Council of State jurisdiction over civil consequences of its decision to rule an administrative act unlawful (*contentieux de l'indemnité réparatrice – schadevergoeding tot herstel*). At the choice of the citizen demanding the annulment of an administrative act, he can either claim full compensation for the loss he suffered before the civil courts of the judiciary based on general civil liability law, in which case he has to prove that the administration committed a fault, or he can claim a reasonable compensation based on this administrative principle before the Council of State, in which case the unlawfulness of the act suffices so no fault of the administration has to be shown, but in which case only partial compensation could be awarded if private or public interests related to the case so require.

Since birth, the Council of State has been, in principle, the court of administrative cassation. Indeed, most of the judgments of other administrative courts can be annulled by the highest administrative court. It is notably the case of the judgments delivered by the *Conseil du contentieux des étrangers* (*Raad voor Vreemdelingen betwistingen*), above mentioned, which is charged with deciding on the cases related to entry, stay, permanent residence and removal of aliens.

Even if it is, at present, a minor legal reality, we can mention that the mediation of administrative litigation is possible but still not explicitly set up by the law. As for arbitration in public law, it is explicitly organised by the Judicial Code about contracts litigation.

The simultaneous existence of civil courts, belonging to the judicial branch of government, and administrative courts, belonging to the legislative or executive branch of government, naturally gives rise to conflicts of jurisdiction. The Constitution provides that such problems have to be settled by the Court of Cassation (*Cour de cassation – Hof van Cassatie*), the supreme civil court belonging to the judicial branch.

§4.05 CONCLUSION

This brief outline of Belgian administrative law may leave the foreign reader with a feeling of complexity. It is hardly surprising that such complexity exists in all contemporary societies where the State is answerable for the various needs and expectations of citizens. It is also the inescapable result of the need to reconcile administrative efficiency and protection of citizens' fundamental rights.

§4.06 SELECTED BIBLIOGRAPHY

- D. Batsele, T. Mortier & M. Scarcez, *Algemeen administratief recht* (Brussels: Bruylant 2012).
- D. Batsele & M. Scarcez, *Abrégé de droit administratif* (Brussels: Larcier 2015).
- Ph. Bouvier, R. Born, B. Cuvelier & F. Piret, *Eléments de droit administratif* (2nd ed., Brussels: Larcier 2013).

- A. Buttgenbach, *Manuel de droit administratif*, Première partie, *Théorie générale du droit administratif belge* (3d ed., Brussels: Larcier, 1966).
- C. Cambier, *Droit administratif* (Brussels: Larcier 1968).
- J. Dembour, *Droit administratif* (3d ed., La Haye: M. Nijhof 1978).
- M.-A. Flamme, *Droit administratif* (Brussels: Bruylant 1989).
- P. Goffaux, *Dictionnaire de droit administratif* (2nd ed., Brussels: Bruylant 2016).
- M. Leroy, *Contentieux administratif* (5th ed., Limal: Anthemis 2011).
- P. Lewalle & L. Donnay, *Contentieux administratif* (2nd ed., Brussels: Larcier 2008).
- A. Mast, J. Dujardin, M. Van Damme & J. Vande Lanotte, *Overzicht van het administratief recht* (18th ed., Antwerp: Kluwer 2009).
- D. Renders et al., 3 *Droit administratif, Le contrôle de l'administration* (Brussels: Larcier 2010).
- D. Renders, *Droit administratif général* (2nd ed., Brussels: Bruylant 2017).
- J. Salmon, J. Jaumotte & E. Thiebaut, *Le Conseil d'Etat de Belgique* (Brussels: Bruylant, 2012).
- J. Vande Lanotte, G. Goedertier, Y. Haeck, J. Goossens & T. De Pelsemaeker, *Belgisch publiekrecht* (Bruges: die Keure 2015).