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Foreseeability and Adequate Causation in International, European and Turkish Business Law

Uluslararası, Avrupa ve Türk Ticaret Hukukunda Öngörülebilirlik ve Yeterli Nedensellik

Çağlar Şahin*

Abstract: Foreseeability and adequate causation are methods for limiting the liability for damages. Foreseeability theory is found in United Nations Convention on the International Sale of Goods (hereinafter "the CISG"), Principles of European Contract Law (hereinafter "the PECL"), French, and English law. Although we refer to the theory with the same name in this context, when considering the main differences between common law and civil law, especially regarding liability systems and good faith principles, it must be expected to give different results in practice. As a result, French law differs from English law and CISG in terms of fault-based liability and PECL in terms of the good faith principle. So, we achieve different categories in foreseeability theory. On the other hand, adequate causation is accepted in German and Turkish law and is different from foreseeability theory. The situation that makes foreseeability and adequate causation so important and why they are included in the study is the basis for determining the liability for breach of contract. The study's main purpose is to analyze the application of which method between parties from common law and civil law systems is more appropriate for both parties. In addition, CISG and PECL are part of lexmercatoria and combine civil and common law elements. So that is the reason why they are included in this study. Therefore, this study compares CISG, PECL, English contract law, Turkish contract law, German contract law, and French contract law from the viewpoint of foreseeability and adequate causation theories based on the good faith principle and the liability systems to find out the differences. In conclusion, foreseeability theory in French law and PECL are more appropriate for business parties from common law and civil law systems. In this respect, foreseeability in PECL is appropriate regarding strict liability systems. On the other hand, foreseeability in French law is appropriate regarding fault-based liability systems.

Structured Abstract: Foreseeability and adequate causation are methods for limiting the liability for damages. The study's main purpose is to analyze the application of which method between business parties from common law and civil law systems is more appropriate for both parties.

In this study, I am going to compare the CISG, PECL, English contract law, Turkish contract law, German contract law, and French contract law from the viewpoint of foreseeability and adequate causation theory based on good faith principles and liability systems. So, these are the main differences between common law and civil law. I am willing to point out the differences, particularly from this point of view. Also, case laws will be used to determine the main differences in practice.

*Doktora Öğrencisi, Debrecen Üniversitesi Marton Géza Hukuk ve Siyasal Bilimler Doktora Okulu
PhD student, University of Debrecen Marton Géza Doctoral School of Legal and Political Sciences
ORCİD 0009-0008-9469-8302
avukatcaglarsahin@hotmail.com

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CISG and PECL are lex mercatoria. I added the CISG to the analysis because of the nature of the Convention, which closely connects to general questions of contract law from a truly international perspective. CISG is an internationally drafted instrument governing contracts, combining elements from civil law and common law systems. In addition, Turkey, France, and Germany are the participating countries of the CISG. Also, PECL is not binding even for member states of the European Union (hereinafter "the EU"). However, PECL is a fundamental point for exploring European contract law heritage and reflects the majority position on contract law matters of the EUmember states, which is how contract law looks like in these countries.

Foreseeability theory was regulated for the first time in the French Civil Code but exists today in common law and civil law. Moreover, foreseeability theory is also accepted in international instruments like PECL and CISG. Although we refer to the theories with the same name in this context, when considering the main differences between common law and civil law, especially regarding liability systems and good faith principles, it must be expected to give different results in practice. So, the application of good faith is accepted in French law and PECL. However, it is not possible in English law and CISG. So, First of all, the difference in terms of the application of good faith separates these two groups. On the other hand, the difference in the liability system between French law and PECL leads to separating these two from each other. So, as a result, we achieve three categories regarding foreseeability:

1. Foreseeability theory in English law and CISG.
2. Foreseeability theory in French law
3. Foreseeability theory in PECL

On the other hand, adequate causation theory was first accepted in German law but exists in Turkish law today. German and Turkish law is based on fault-based liability systems, and good faith is applied. Therefore, there are no differences between them from the viewpoint of adequate causation theory.

There are differences between foreseeability theory and adequate causation theory:

1. The moment of evaluation for foreseeability. So it can be whether the conclusion of contract or breach of contract.
2. The consideration of objective or both objective and subjective foreseeability.

So, the moment of evaluation for foreseeability is the conclusion of a contract in foreseeability theory. However, it is a breach of the contract in adequate causality theory. Also, there is objective foreseeability in adequate causality theory. However, it is both objective and subjective foreseeability in foreseeability theory.

On the other hand, there are differences in foreseeability theory:

1. The consideration of intentional acts or negligence in foreseeability.
2. Consideration of a causal relation between a breach and damage.

French law considers intentional acts or negligence in foreseeability as distinct from CISG and English law. Also, PECL considers negligence in foreseeability, but there is strict liability in PECL as distinct from French law. However, PECL is also different from CISG and English law from this point of view.Also, French law considers a causal relation between a breach and damage. This approach is similar to adequate causality theory, and the reason is a fault-based liability in French law.

As a result, foreseeability in CISG is appropriate with common law as English law. Also, adequate causation in German and Turkish laws is different from them. So, they are civil law. On the other hand, considering all circumstances, the foreseeability in PECL and French law is more appropriate between parties from common law and civil law systems. This is because both combine elements from civil law and common law systems. Also, in practice, the prudent merchant rule is applied in all except PECL because there is no case law of PECL.

Firstly there are similarities between CISG, English law, and French law. So, both subjective foreseeability and objective foreseeability are considered. Besides that, the moment of evaluation for foreseeability is at the time of the conclusion of a contract. However, on the other hand, there are similarities between French law and German law, and Turkish law. So, intentional acts and gross negligence are considered in terms of foreseeability, and there is a fault-based liability system. Besides that, the causal

relation between a breach and the damage is considered, and the good faith principle is applicable. Thus, French law combines elements from civil law and common law systems.

Also, there are similarities between CISG, English law, and PECL. So, both subjective foreseeability and objective foreseeability are considered. Besides that, the moment of evaluation for foreseeability is when a contract is concluded. Also, there is strict liability in PECL, as in CISG and English law. However, on the other hand, there are similarities between PECL, German law, and Turkish law. So, negligence is considered in foreseeability. Besides that, the good faith principle is applicable. Thus, PECL combines civil and common law elements in foreseeability.

In this respect, foreseeability in PECL is appropriate regarding strict liability systems. On the other hand, foreseeability in French law is appropriate regarding fault-based liability systems.

Keywords: Foreseeability, adequate causation, liability, good faith, contract

Öz: Öngörülebilirlik ve yeterli nedensellik, zarar sorumluluğunu sınırlayan metotlardır. Öngörülebilirlik teorisi PECL, CISG, Fransız ve İngiliz hukuklarında bulunmaktadır. Bu bağlamda teoriye aynı adla atıfta bulunmamıza rağmen, medeni hukuk ve anglo-sakson hukuk sisteminin arasındaki temel farklılıkları, özellikle de sorumluluk sistemleri ve iyi niyet prensibi açısından dikkate aldığımızda, uygulamada farklı sonuçlar vermesi beklenmelidir. Sonuç olarak Fransız hukuku, kusur sorumluluğu ve PECL de iyi niyet prensibi açısından İngiliz hukuku ve CISG'den farklıdırlar. Bu anlamda öngörülebilirlik teorisi açısından farklı kategorilere ulaşmaktayız. Öte yandan, yeterli nedensellik Alman ve Türk hukukunda kabul edilmektedir ve öngörülebilirlik teorisinden farklıdır. Öngörülebilirlik ve yeterli nedenselliği önemli yapan durum ve bunun çalışmanın içinde yer alma nedeni, sözleşmeye aykırılık sorumluluğunun belirlenmesine esas teşkil etmesidir. Bu çalışmanın ana amacı, hangi metodun uygulanmasının medeni hukuk ve anglo-sakson hukuk sistemlerinde yer alan taraflar arasında her iki taraf için de daha uygun olduğunun analiz edilmesidir. Ayrıca CISG ve PECL lexmercatoria içindedir ve hem medeni hukuk ve anglo-sakson hukuk sistemlerinden unsurları bir araya getirmektedirler. Onların bu çalışma içeriğinde olma nedenleri de budur. Bu çalışma CISG, PECL, İngiliz sözleşme hukuku, Türk sözleşme hukuku, Alman sözleşme hukuku ve Fransız sözleşme hukukunu öngörülebilirlik ve yeterli nedensellik teorileri açısından, iyi niyet prensibi ve sorumluluk sistemlerini temel alarak karşılaştırarak farklılıkları bulup çıkarmaktadır. Sonuç olarak, Fransız hukuku ve PECL'deki öngörülebilirlik medeni hukuk ve anglo-sakson hukuk sistemlerinde yer alan taraflar arasında her iki taraf için de daha uygundur. Bu anlamda, PECL'deki öngörülebilirlik, kusura dayalı olmayan sorumluluk sistemleri açısından uygundur. Diğer yandan, Fransız hukukundaki öngörülebilirlik, kusur sorumluluğu sistemleri açısından uygundur.

Anahtar Kelimeler: Öngörülebilirlik, yeterli nedensellik, sorumluluk, iyi niyet, sözleşme

Introduction

In today's globalizing world, especially in international trade, the issue of the formation of contracts and the law to be applied to their contracts are of great importance to the parties. This study makes this case on the concept of foreseeability and adequate causation.

Foreseeability and adequate causation are methods for limiting the liability for damages. The relationship between liability and methods necessitated making a distinction by considering the differences between the types of liabilities. So, the liability system is also the main difference between common and civil law. On the other hand, applying the good faith principle also has to be considered by distinguishing between methods.

The study's main purpose is to analyze the application of which method between parties from common law and civil law systems is more appropriate for both parties. So, CISG, PECL, English contract law, Turkish contract law, German contract law, and French contract law are compared from the viewpoint of foreseeability and adequate causation theory based on the good faith principle and the liability systems. So, I am willing to find out the differences, particularly

from this point of view. This way, the most appropriate method between both parties from common law and civil law systems will be found by analyzing the differences.

I added the CISG to the analysis because of the nature of the Convention, which is in close connection to general questions of contract law from a truly international perspective. CISG is an internationally drafted instrument governing contracts, combining elements from civil law and common law systems. In addition, Turkey, France, and Germany are the participating countries of the CISG. Moreover, PECL is just a document, and it is not binding even for the EU member states. However, PECL truly reflects the majority position on contract law matters of the EU member states, and that is how contract law looks like in these countries. Therefore, PECL is a snapshot of EU contract law heritage on formation, breach, remedies, and other fundamental questions.

Foreseeability

The concept of foreseeability is the most widely used instrument to limit liability for damages, and it is used in both a fault-basedliability system and a strictliability system. The foreseeability rule was regulated for the first time in history in the French Civil Code and later in other domestic legal systems heavily influenced by French law. Finally, the foreseeability rule came to the common law juris dictions with the *Hadley v Baxendale* case in England(Schwenzer, Hachem, & Kee, 2012, pp. 595-596). Also, the principle was restated in other cases, notably Victoria Laundry v Newman Industries case (Zeller, 2005, p. 90). Also, the foreseeability rule was adopted by international instruments, as in CISG (Schwenzer, Hachem, & Kee, 2012, p. 597).

The rule in Hadley v Baxendale provides, in essence, that damages may be recovered when a loss is one that arises naturally, that is, in the usual course of things, or, otherwise, if this loss has been in the contemplation of the parties (Komarov, 2008, p. 252). Also, there is a remoteness test in common law jurisdictions, which limits the recovery of losses. In other words, the contract breacher is not liable for losses that are found to be too remote from the actual breach. On the other hand, as adopted in Hadley v Baxendale case, the foreseeability rule is the main test for remoteness(Schwenzer, Hachem, & Kee, 2012, p. 597). The doctrine of remoteness limits the right of the innocent party to recover damages to which he would otherwise be entitled. The general test is that the claimant can only recover in respect of losses within the reasonable contemplation of the parties at the time of entry into the contract (McKendrick, 2017, p. 457). The court acknowledged the foreseeability rule as the applicable test to determine liability for damages more precisely and whether the loss sustained was too remote(Schwenzer, Hachem, & Kee, 2012, p. 597). To define the knowledge, the court relied on two rules established in Hadley v Baxendale case: imputed knowledge and knowledge, which is known or possessed by the parties. Furthermore, foreseeability was measured at the time when the contract was made (Zeller, 2005, p. 94). In Hadley v Baxendale (1854), it was decided that loss, in order to be compensatable, must either:

(a) a rise ‘naturally—that is, according to the usual course of things from the breach of contract (which means it must be reasonably foreseeable) (Youngs, 2014, p. 680). In order to qualify as a loss that occurred naturally, there must have been a serious possibility, a real danger, or a very substantial probability that the loss would occur, as stated in Heron 2 case (McKendrick, 2017, p. 457).

(b) a result from abnormal circumstances, if they may reasonably be supposed to have been in the contemplation of both parties at the time, they made the contract as the probable result of the breach (which means that the defendant must have had sufficient notice of these to make the loss foreseeable) (Youngs, 2014, p. 680). The defendant must at least know of the special circumstances, and there is some suggestion in the case law that the claimant must go further and establish that the defendant agreed to assume liability for the exceptional loss (McKendrick, 2017, p. 458).

In common law systems, the former category refers to the loss that any reasonable person in the defendant's position could have foreseen. The latter category refers to the loss which could have been foreseen by a reasonable person with the same knowledge of special circumstances as the defendant had. As an example, knowledge of the purpose for which the aggrieved party wanted the subject matter of the contract (Komarov, 2008, pp. 252-253).

Article 74 of the CISG imposes the limiting factor of foreseeability. The most important element contained in article 74 is knowledge measured at the time of contract was concluded and not at the time of breach (Zeller, 2005, p. 91). In my opinion, this is similar to English law and different from adequate causality in Turkish and German laws from this point because it is at the time of the breach in Turkish and German laws. There is no requirement of fault under article 74 of the CISG, as stated in the decision of the Supreme Court of Austria(CoolingSystem Case, 2002). So, the common law system has adopted a compensation system that does not consider fault, and this understanding is also included in the CISG. In the common law system, causality is complementary to foreseeability only in the account of liability charge (Akşin, 2016, p. 23). The foreseeability rule in the CISG considers both what is foreseeable by the parties (subjectively) and what is foreseeable objectively, as stated in the decision of the Supreme Court of Austria(Zeller, 2005, p. 95; CoolingSystem Case, 2002).The significant point here is whose foreseeability will be considered in determining damages under the contract. The person required to foresee the possible consequences of breach of contract is the party who breached the contract according to article 74 of the CISG. At this point, it is claimed that the Treaty is separated from the common law legal system because the foreseeability of both sides of a contract is considered in the common law legal system, as in the Hadley v. Baxendale case. However, in the doctrine, it is stated that this difference between the common law legal system and the Treaty does not lead to different results in practice because the courts emphasize whether the breaching party of the contract has foreseen the damage as in Czarnikow Ltd. v. Koufos case (Uzun, 2014, pp. 163-164).

There is a requirement of causation to determine liability in many civil law countries as common law countries. In French law, causality is generally used within the scope of the concept of foreseeability. Under French law, a respondent is liable only for damages that were foreseen or could have been foreseen at the time of the contract, except in cases of an intentional breach. The foreseeability requirement applies to the type of damage and the amount of loss and limits damages, particularly for lost profits. In addition, French Law requires that the damages be a direct result of the breach as well as being foreseeable(Gotanda, 2006, p. 17). The approach of limiting the loss to foreseeable damages is included in Article 1150 of the French Civil Code. So, this principle applies to damages foreseen or foreseeable by a prudent person in the same situation as the debtor. This determination is made by considering the subjective criteria. However, the practices between the parties and usages in commercial life are also considered (Akşin, 2016, p. 27). It is similar to CISG because it just considers the breaching party's foreseeability as distinct from the common law system (Zeller, 2005, p. 95). The claimant's fault may totally or partially exonerate the defendant in French Law (Youngs, 2014, p. 681).

In common law systems, a fault is not considered an element of contractual liability (Komarov, 2008, p. 255) as in CISG(CoolingSystem Case, 2002).Intentional acts and gross negligence strongly influence the foreseeability rule's applicability in France. Also, the French Supreme Court has continually expanded its understanding of intentional acts to protect the weaker parties. However, in addition to the traditional understanding of fault in the sense of the Roman culpa, the French Supreme Court also assumes that an act of gross negligence and hence an intentional act is also where a main obligation of the contract is breached, or the breach has particularly severe consequences(Schwenzer, Hachem, & Kee, 2012, p. 599).

Article 9:503 of PECL, though essentially repeating the elements of CISG, adds the sentence "unless the non-performance was intentional or grossly negligent." So, PECL includes the

element of negligence in the principle of foreseeability which CISG (Zeller, 2005, p. 91) and English law have ruled out. However, it is similar to French law from the viewpoint of that, in my opinion.

Also, the person required to foresee the possible consequences of a breach of contract is the party who breached the contract, according to article 9:503 of PECL. Therefore, it is similar to CISG and French law, as distinct from English law, in my opinion.

The important point to be mentioned here is thatifthere is a merchant, theconcept of a prudent merchant or businessman will be consideredinstead of an ordinary or regular person. That is in the concept of duty of care (Gümüş, 2016, p. 1224). According to article 75 of the CISG, an aggrieved party must act as a "careful and prudent businessman" while observing the relevant trade practices as stated in one ICC Arbitration Case(CISG-AC Opinionno 8, 2008).In my opinion, we can see a similar approach to the prudent merchant approach of CISG in the case law of the UK as it was in the Bank Line v. Capel case from the viewpoint of English case law. In this case, the court considered what a reasonably prudent commercial man would have thought. Also, this determination is made by considering what is foreseeable by the parties (subjectively) and what is foreseeable objectively. So, it was considered which factors are unknown by parties, even though some others might know (Howard, 2013, pp. 132-133). In my opinion, we can see a similar approach and interpretation in French law as stated in the decision of the 3rd Civil Chamber of the French Supreme Court (Mudrić, 2013, pp. 485-486). So, similar results occur in practice. There is no case law of PECL, but if it was, the same result could be achieved by considering subjective and objective foreseeability in PECL, in my opinion.

Adequate Causation

Despite a positive attitude to the ‘foreseeability’ test in national codifications in the years following the enactment of the French Civil Code and its introduction in the English common law, the concept of limiting damages was rejected in an important segment of continental legal tradition German law. Instead, the German Civil Code, adopted almost 100 years after the Code Napoleon, opted for a different standard, ‘causation.’ This method of limiting damages is used in domestic legal systems that have been developing under the influence of the German Civil Code. The initial assumption as a starting point is that if a debtor defaults, he or she will be liable for the loss(Komarov, 2008, pp. 252-253). German law still limits damages via the concept of adequate causation. The test for adequate causation is expressed as "whether the obligor's default made losses of the type incurred more likely when judged by ordinary human standards at the time they occurred."(Gotanda, 2006, pp. 17-18).In other words, it must be decided from the point of view of an experienced observer whether the breach significantly increases the objective probability of loss. Moreover, according to this test, the knowledge of all the circumstances that such a person must have and any special knowledge held by the breaching party will be attributed to such an observer(Saidov, 2008, p. 89). The result may often be similar to that obtained by application of the test of foreseeability, except in certain special cases in which the outcome will usually benefit the claimant (Youngs, 2014, p. 682). Indeed, this theory is valid in Turkish and German law doctrine and practice (Eren, 1975, p. 51). So, adequate causation is also adopted in Turkish law concerning causality. This theory was developed to eliminate the injustices caused by unjustly extending the area of responsibility. Adequate causation is the logical causal relation between a breach and the damage it can cause according to general experience and the ordinary course of events. The significant point is not that the breaching party of the contract has foreseen the damage (subjectively), but it must be objectively acceptable that the breach could cause such damage in the ordinary course of events (Gürkan, 2015, p. 20) as distinct from CISG, PECL, English law, and French law, in my opinion. The theory of adequate causation does indeed, on its face, not ask whether the loss was foreseeable but whether the breach increased the risk that such a consequence may occur (Markesinis, Unberath, & Johnston, 2006, p. 474).

While the adequate causality theory was initially called a pure theory of causality, it is suggested to be an imputation theory or, in other words, a theory of liability according to the prevailing opinion today. This applies not only to adequate causality theory but also to all theories of legal causation. In fact, it is about determining to what extent the person can be held fairly responsible for the consequences of a condition, as stated in a German Federal Court judgment, because the task of these theories is to attribute a particular result to a particular person (Eren, 1975, pp. 55-56).

Contractual liability is, in principle, based on the fault in Turkish and German laws (Atamer, 2008, p. 253) as distinct from English law, PECL, and CISG, in my opinion. So, there is no requirement for fault in common law systems, PECL, and CISG. In the common law system, causality is complementary to foreseeability only in the account of liability charge. In the civil law system, where fault-based liability is adopted, causality theories have been adopted to limit liability distinctly (Akşin, 2016, p. 23). As a good example in one case, the German Federal Court applied the theory of the purpose of the contract alongside 'adequate cause': i.e., it sought to limit liability to what is justified in the light of the violated contractual duty (Markesinis, Unberath, & Johnston, 2006, p. 89).

According to the adequate causality theory, the moment of evaluation for adequate causality is the time when the breach of the contract occurs. Also, according to the acknowledged opinion in Turkish law, the time after the contract's breach is considered from the viewpoint of adequate causality (Akşin, 2016, p. 83).

Ifthere is a merchant, theconcept of a prudentmerchantorbusinessmanwill be consideredinstead of an ordinaryorregularperson, as in CISG, French law, and English law. That is in the concept of duty of care (Gümüş, 2016, p. 1224). Merchants should take the necessary measures as prudent merchants, as stated by the Turkish General Assembly of CivilChambers of the Court of Cassation.(Koç, 2019, p.81).Every merchant should act as a prudent merchant according to article 18(2) of the Turkish Commercial Code, and similar regulation is in article 347 of the German Commercial Code (Gümüş, 2016, p. 1227).The prudent merchant has to pay closer attention than the ordinary reasonable man, according to article 347 of the German Commercial Code (Joachim, 1992, p. 356).In addition, the party concerned by the potential change is responsible for taking precautionary measures according to the German Federal Supreme Court decision (Rösler, 2007, p. 493). In my opinion, this is similar to the Turkish Assembly of Civil Chambers' approach to being a prudent merchant. So, evaluation is made by considering what is foreseeable objectively, without considering what is foreseeable by the parties (subjectively) in German and Turkish laws as distinct from CISG, PECL, French law, and English law, in my opinion. Also, according to the Turkish Supreme Court of Civil Chamber decision, the criterion of 'acting as a prudent merchant' is the fault criterion (Gümüş, 2016, pp. 1224-1225). So, the foreseeability of the damage is about the fault and not related to the causal link, as stated by the Switzerland Federal Court (Eren, 1975, p. 95).

The practical effect of the theory of 'adequate causation' and a formal rejection of the principle of foreseeability may give one reason to think that such an approach creates insufficient protection for the defendant. As a means of improving this position, a general provision on good faith in section 242 of the German Civil Code has sometimes been used to limit the defendant's liability (Komarov, 2008, p. 253). We can also see that in Turkish jurisdictions, good faith has sometimes been used to limit the defendant's liability, as stated by the Turkish Supreme Court of Appeal 11th Civil Circuit (Gümüş, 2016, pp. 1231-1232).

The CISG restricted the application of good faithto the interpretation of the Convention according to article 7, while showing good faith is not a requirement when performing the contract. However, the parties have to perform with good faith according to article1:201 of the PECL (Felemegas, 2001). The French Code of Civil mentions the concept of good faith, but they have not

had the influence that the concept of good faith has had in Germany (Youngs, 2014, pp. 81-82). However, English law has not adopted a general doctrine of good faith (Friedmann, 2008, p. 80). In common law systems, a fault is not considered an element of contractual liability. The general position is that once a breach occurs, it makes no difference whether it was committed intentionally, negligently, or innocently or whether the party in default acted in good faith(Komarov, 2008, p. 255).

Conclusion

We can achieve four categories regarding foreseeability and adequate causation theories:

1. Foreseeability theory in English law and CISG.
2. Foreseeability theory in French law
3. Foreseeability theory in PECL
4. Adequate causation theory in German and Turkish laws.

The main difference between these categories is that they have different liability systems. So there is a foreseeability theory in English law, CISG, French law, and PECL. However, while there is strict liability in English law, PECL, and CISG, it is a fault-based liability in French, German, and Turkish law. In the common law system, causality is complementary to foreseeability only in the account of liability charge. In the civil law system, where fault-based liability is adopted, causality theories have been adopted to limit liability. On the other hand, the good faith principle is applicable in PECL and French law as in Turkish and German law, unlike CISG and English law. However, there is strict liability in PECL, but it is a fault-based liability in French law.

Moreover, adequate causation is defined as the logical causal relation between a breach and the damage that it can cause according to general experience and the ordinary course of events. So, a causal relation between a breach and damage is also considered by French law. However, objective and subjective foreseeability are considered together in foreseeability theory in French law as distinct from German and Turkish law. So, only objective foreseeability is considered in German and Turkish law. Also, in French law, intentional acts and gross negligence strongly influence the foreseeability rule's applicability in France. So, it is again because there is a fault-based liability in French law. However, PECL also includes the element of negligence in the principle of foreseeability as in French law, but there is a strict liability in PECL. Also, in the common law system, as in England, foreseeability or knowledge is considered from the viewpoint of both parties, but it is just about breaching parties according to the CISG, PECL, Turkish law, French law, and German law. However, this difference does not lead to different results in terms of practice, as stated in the doctrine. Also, a moment of evaluation for adequate causality is the time when the breach of the contract occurs. On the other hand, the moment of evaluation for foreseeability is when a contract is concluded. Lastly, ifthere is a merchant, theconcept of a prudentmerchantorbusinessmanwill be consideredinstead of an ordinaryorregularperson in CISG, English, French, Turkish, and German law. So, similar results occur in practice.

As a result, foreseeability in CISG is appropriate with common law as English law. Also, adequate causation in German and Turkish laws is different from them. So, they are civil law. However, foreseeability in PECL and French law combine elements from both. So, considering all circumstances, the foreseeability in PECL and French law is more appropriate between parties from common law and civil law systems. This is because both combine elements from civil law and common law systems.

Firstly there are similarities between CISG, English law, and French law. So, both subjective foreseeability and objective foreseeability are considered. Besides that, the moment of evaluation for foreseeability is at the time of the conclusion of a contract. However, on the other hand, there are similarities between French law and German law, and Turkish law. So, intentional acts and gross negligence are considered in terms of foreseeability, and there is a fault-based liability

system. Besides that, the causal relation between a breach and the damage is considered, and the good faith principle is applicable. Thus, French law combines elements from civil law and common law systems.

Also, there are similarities between CISG, English law, and PECL. So, both subjective foreseeability and objective foreseeability are considered. Besides that, the moment of evaluation for foreseeability is when a contract is concluded. Also, there is strict liability in PECL, as in CISG and English law. However, on the other hand, there are similarities between PECL, German law, and Turkish law. So, negligence is considered in foreseeability. Besides that, the good faith principle is applicable. Thus, PECL combines civil and common law elements in foreseeability.

In this respect, foreseeability in PECL is appropriate regarding strict liability systems. On the other hand, foreseeability in French law is appropriate regarding fault-based liability systems.

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