A preface is not destined to give an overview, only to emphasize what is essential in the preface's view. That is, in my view, the way in which the author searches, in chapter 6, the significance of a European *ius commune* as it emerges from his examination of three major European liability systems: the English, the French, and the German. The concept goes back to the twelfth century and was based mainly in Roman law. In the Middle Ages, it was not conceived of as a system of rules enacted for a specific territory. This traditional *ius commune* disintegrated, however, with the rise of rationalism and nationalism in the eighteenth century when some rulers wanted the identity of the nation to be supported by a national codification (Section 602). Currently, harmonization and the search for a new *ius commune* are at the very heart of the European private law discourse. Sometimes, the author observes, the discussion seems to have divided the European academic world into believers and heathen. Unfortunately, in this discussion, the question whether harmonization is desirable and for what purpose, is less debated (Section 603-3), as are the differences in attitude towards the codification phenomenon and the level of systematization in the various legal systems, and the academic involvement in it (Section 604-1).

In light of these differences, the author examines basic issues in common and codified legal systems, such as the predominance of the judiciary over the legislator (Section 604-2), as well as the characteristics of legal cultures behind the law (Section 610): the German fondness for legal order, the English fondness for traditions, and the French fondness for *grands principes*. He also examines the policy approaches of these systems based on diverging concepts of justice, that is, on what is considered to be just, fair, and reasonable: English tort law is primarily about corrective justice and regulating conduct (Section 609-2); French tort law is less focused on how someone should behave than on how someone can get damages; whereas German law takes an intermediate position but closer to French law in that both systems regard equality and solidarity and victim protection, as the main concerns of tort law (Section 609-3).

In this context, the role of European law is functional and fragmented insofar as harmonization is needed for the functioning of the internal market, even though the European Parliament and the Commission tend to favour a more systematic approach (Section 611). However, is such a systematic harmonization feasible and desirable? The author's answer, focused on tort law, is that the case for harmonization of tort laws has not (yet) been made (Section 612): '[T]he focus should not be on a Europe united in unity with pan-European rules but rather on a Europe united in diversity with harmonized rules where needed and diversity where possible' (Section 613). That does not mean that the quest for a European *ius commune* should be abandoned. Quite the contrary: it has lifted academic discussions on private law issues to a European level. It has paved the way for a truly European legal scholarship rather than a national one. Comparative research
has become a core business and this has strongly stimulated the transboundary dissemination of information… . The issue is to organize and stimulate this dynamic process but not to force it to provide results unless necessary. The results will need to be flexible and will therefore [depending on the area] to be diverse … (Section 613).

As the undersigned has written—statement that is endorsed by the author: ‘convergence of the minds of practitioners, judges, professors, and future lawyers is at least as important as convergence of laws …’ (Section 613).

Convergence of minds can be achieved in many ways: through national and supranational courts comparing notes and learning from one another; through national regulators spreading good practices amongst themselves; through academics providing teaching and reading materials that can be used in universities and by practitioners throughout the European Union. Surely, promoting convergence may take more time than harmonizing laws and will, undoubtedly, be less spectacular than preparing comprehensive codification (for which, however, there is no legal basis in the European treaties). But, in the long run, convergence may present a more solid basis for European integration to take root in the Member States’ legal systems, than codification that is not supported by a sufficient convergence of the minds will ever be able to do. However, as the author points out (Section 613), to make convergence succeed in the area of tort laws, there is a pressing need for a general discourse on policy issues in European tort law in order to explore divisive questions. These questions include: what are the driving forces and prevailing ideas behind tort law? How much protection do victims and potential tortfeasors need, and should the emphasis be on the freedom to act or on protecting interests, on corrective justice or on distributive justice? The present book is an excellent start to encourage such a policy discourse and to make it fruitful. From that angle, it is an excellent reading for a large audience of academics and practitioners, students and teachers within the European Union and beyond.

Walter van Gerven

Leuven, December 2005
PREFACE TO THE SECOND EDITION

It is most encouraging that the first edition of this book has been so well received and that a second edition is warmly welcomed. This second edition brings the text up to date in terms of legislation, case law, and literature published since 2005.

The following sections were added: Comparative Law (103), Tort remedies as effective ECHR remedies (202-2); Relationship between the EU and the ECHR (203-5); Article 8 ECHR: Follow-up to Caroline von Hanover (706-6); Rights Protected by Tort Law (711-1); Tort rights are human rights (711-4); Damages as an effective remedy in business and human rights (1211), Limitation and extinction periods in product liability (1410-3); Article 8 ECHR and environmental liability (1416-4); Parent companies vis-à-vis their subsidiaries (1608); and Differences between liability of public and private actors (1801-1).

The following sections were considerably revised: The development of a general principle of liability for breach of EU law (205); Fault liability: the BGB provisions (402); Tort of negligence (503); Trespass to the person (504); Various legal cultures (610); The right to mental health (705); Damages as an effective remedy in EU law (1209); Damages as an effective remedy in the ECHR (1210); Previously existing liability regimes in product liability (1407-2); Liability of public bodies in England (1804); Sufficiently serious breach in EU law (1805); No liability for lawful acts in EU law (1806); and The right to life: Article 2 ECHR (1807).

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This book has been updated until 1 July 2012.

Cees van Dam

London, January 2013
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