
**COMMONALITIES BETWEEN THE ‘AUSTRALIAN LAW OF CONTRACT’
AND THE GENERAL LAW OF CONTRACT OF
THE ‘BRAZILIAN CIVIL CODE’:**
A Rule-Based Study Towards a Global Law of Contract

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STATEMENT OF ORIGINALITY

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Eliezer Sánchez Lasaballett

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ABSTRACT

This thesis explores the commonalities between the draft *Australian Law of Contract* ('ALC') and the general rules of contract law of the *Brazilian Civil Code* ('BCC'). This search for commonalities is framed in the context of legal harmonisation as a phenomenon in various national and transnational agendas of legal reform around the world. This thesis adopts the functional approach to comparative law by looking at how contract rules provide legal solutions to similar legal problems overcoming taxonomic and conceptual barriers between legal traditions and languages.

The comparative exercise involves the translation of relevant rules of the *BCC* from Portuguese into English, a lingua franca, in order to juxtapose them with the *ALC* rules. This thesis argues that there is a high degree of commonality between the contract law of these two jurisdictions that transcends differences in legal traditions and conceptual architectures. Where similarities are apparent, they are reported on the basis of their most significant degree of identity; where similarities are hidden, they are presented on the basis of their consistency.

Both sets of rules establish the basis of contracts under the principles of good faith and freedom of contract and form, only limited by the concurrence of requirements of existence, legality and public policy. Both sets of rules provide for termination of the contractual relationship on the grounds of breach and supervening events while offering a series of remedies of compensatory and restitutionary nature. Likewise, they provide for substitution of parties to the contractual relationship. In any of these categories, contracts fulfil similar functions despite operating under different taxonomic arrangements and concepts. Evidence of numerous commonalities demonstrates the suitability of the *ALC* as an instrument for harmonising the contract law of Australia with its trade partners while paving the way towards the formulation of a global law of contract.

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