

## IMMORAL CONTRACTS IN EUROPE

The Common Core of European Private Law Series

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IMMORAL CONTRACTS  
IN EUROPE

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## Immoral Contracts in Europe

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To our mothers Amra, Anita, and Lucia



## GENERAL EDITORS' PREFACE

It is a special pleasure to welcome the 19th book in the series *The Common Core of European Private Law*, the second published by Intersentia. This book is edited by three scholars, who together represent four different legal cultures: the Dutch, the English, the German, and the Italian. Their works are already renowned and appreciated well beyond the 'Common Core' circles.

The Common Core project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger. The methodology used in the Common Core project, then novel, is now a classic. By making use of case studies, it goes beyond mere description to detailed inquiry into how most European Union legal systems resolve specific legal questions in practice, and thorough to comparisons between those systems. It is our hope that these volumes will provide scholars with a valuable tool for research in comparative law and in their own national legal systems. The collection of materials that the Common Core project is offering to the scholarly community is already quite extensive and will become even more so as more volumes are published. The availability of materials attempting a genuine analysis of how things seem to be is, in our opinion, a prerequisite for an intelligent and critical discussion on how they should be. Perhaps in the future European private law will be authoritatively restated or even codified. As of today, the Common Core project is the longest-running scholarly enterprise in the field. The analytical work carried out by the more than 300 scholars that have so far joined us in the Common Core project is also a precious asset of knowledge and legitimisation for any such a normative enterprise.

We must thank the editors and contributors for their work. With a sense of deep gratitude, we also wish to recall our late Honorary Editor, Professor Rudolf B. Schlesinger. We are sad that we have not been able to present him with the results of a project in which he believed so firmly.

No scholarly project can survive without committed sponsors. The International University College of Turin allows us to organise the General Meetings together with the Centro Studi di Diritto Comparato of Trieste. The European Commission has partially sponsored some of our past General Meetings, having included them in their High Level Conferences Program. The Italian Ministry of Scientific Research, the University of Turin, the University of Trieste, the University of Salento, the University of Gothenburg, the Fromm Chair in International and Comparative Law at the University of California and the Hastings College of Law, the University of Trento, the Collegio Carlo Alberto and the Consiglio

Nazionale del Notariato all contributed to, or are still contributing to, the funding of this Project. Last but not least, we must thank all those involved in our ongoing Common Core projects in contract law, property, tort and other areas, whose results will be the subject of future published volumes.

Our website home page can be found at [www.common-core.org](http://www.common-core.org). There you can follow our progress in mapping the common core of European private law.

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Mauro Bussani, University of Trieste – University of Macao

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Rudolf B. Schlesinger, Cornell University – University of California,  
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## PREFACE

This book adds an in-depth study of the law and practice on immorality of contracts in Europe to the Common Core series. It comprises country reports on 28 European legal systems, in line with the editors' aspiration to give a comprehensive overview of shared and diverging views on immorality of contracts in the European Union. The reports have been drafted on the basis of 12 case scenarios, inspired by real-life cases that were adjudicated in European countries. Furthermore, given the importance of societal debate for the assessment of morality in contract law, significant attention is paid to the context in which the law on specific cases has developed. The combined insights from the national reports provide an overview of the current state of a "Common Core" on immoral contracts in Europe.

Comparative legal studies performed by a large network of academics from many different countries usually require many years of work and, indeed, a great deal of patience from all persons involved. This book, like most volumes in the Common Core series, is no exception to this rule. We presented a first draft questionnaire on immoral contracts – or, more precisely, on the limits to the validity of contracts on ground of morality or public policy – at the General Meeting of the Common Core project in 2012. After settling on the final version of the questionnaire, the first draft country reports were written between 2013–2015. The comparative remarks, the introductory chapters and the second and third drafts of the country reports were completed between 2016–2018. This past year was devoted to the final editing, updating and proofreading of the book.

We would like to express our deepest thanks to all national reporters and contributors for their enthusiasm and long-term commitment to this project, which did not provide any other remuneration but for the publication itself and the enjoyment of wonderful meetings in Turin, Gothenburg, Lecce, Palermo and Trento.

We are grateful to the general editors of the Common Core project, Mauro Bussani and Ugo Mattei, for their constant support, and to all participants to the annual meetings of the Contract Group for their valuable comments and suggestions.

An enormous thank you to all junior scholars and students who helped in editing this volume: Vlad Belev, Tatia Brunings, Silan Celebi, Christian Delev, Sally Eshun, Gillian Erasmus, Giedre Galgauskaite, Teodora Groza, Pamela Ilieva, Tegan Insoll, Joëla M.A. Jansen, Hannah Johnston, Victoria Kopkow, Maria Koskinen, Polina Lyakhteynen, Elena Lazic, Lencia Leslie, Costanza Lopasso,

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Last but not least, we would like to extend special thanks to our colleague and friend Agnes Schreiner for having followed our project with great enthusiasm from its beginning in June 2012 to its end in November 2019, documenting it in videos and photographs.

Aurelia Colombi Ciacchi, Chantal Mak, and Zeeshan Mansoor  
Amsterdam – Groningen – Leiden  
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## LIST OF ABBREVIATIONS

ABGB	Allgemeines bürgerliches Gesetzbuch (Austrian Civil Code) ( <i>Austria</i> )
AIÉPA	Artificial Insemination and Embryo Protection Act 1997 ( <i>Kunstliku viljastamise ja embrüokaitse seadus</i> ) ( <i>Estonia</i> )
AP	Audiencia Provincial ( <i>Spain</i> )
APRC	Annual percentage rate of charge
ATS	Österreichische Schilling (former currency of Austria)
B2B	Business-to-Business
B2C	Business-to-Consumer
BFRF	Bill of Fundamental Rights and Freedoms ( <i>Czech Republic</i> )
BGB	Civil Code (Bürgerliches Gesetzbuch) ( <i>Germany</i> )
BGBI	Bundesgesetzblatt (Official Law Gazette) ( <i>Austria</i> )
BGH	Federal Supreme Court (Bundesgerichtshof) ( <i>Germany</i> )
BlgNR	Beilagen zu den Stenographischen Protokollen des Nationalrates ( <i>Austria</i> )
BrB	Brottsbalken (SFS 1962:700) (Criminal Code) ( <i>Sweden</i> )
BSM	Bill on Surrogate Motherhood [Законопроект за изменение и допълнение на Семейния кодекс (за заместващото майчинство)] ( <i>Bulgaria</i> )
BT-Drucks	Parliamentary Publication (Bundestagsdrucksache) ( <i>Germany</i> )
BVerfG	Federal Constitutional Court (Bundesverfassungsgericht) ( <i>Germany</i> )
BVerfGE	Decisions of the Federal Constitutional Court (Entscheidungen des Bundesverfassungsgerichts) ( <i>Germany</i> )
BW	Burgerlijk Wetboek (Civil Code) ( <i>The Netherlands</i> )
CA	Commercial Act [Търговски закон] ( <i>Bulgaria</i> )
Cass. Civ.	Italian Supreme Court (civil division)
Cass. Pen.	Italian Supreme Court (penal division)
CC	Civil Code
CC	Criminal Code [Наказателен кодекс] ( <i>Bulgaria</i> )
CCA	Consumer Credit Act [Закон за потребителския кредит] ( <i>Bulgaria</i> )

CCIA	Creditors and Credit Intermediaries Act 2015 ( <i>Krediidiandjate ja vahendajate seadus</i> ) ( <i>Estonia</i> )
CCo	Constitutional Court of the Czech Republic
CJEU	Court of Justice of the European Union
CL	Civillikums (Civil Law) ( <i>Latvia</i> )
CO	Code of Obligations ( <i>Slovenia</i> )
Coll.	Collection of laws
ComC	Commercial Code ( <i>Czech Republic</i> )
ComCorp	Law on Commercial Corporations ( <i>Czech Republic</i> )
CommC	Commercial Code – Act no 513/1991 Coll. Commercial Code as amended ( <i>Slovakia</i> )
ConC SR	Constitutional Court of the Slovak Republic
Constitution	Spanish Constitution of 1978
Const	Italian Constitution
CP	Penal Code
CPA	Consumer Protection Act [Закон за защита на потребителите] ( <i>Bulgaria</i> )
CPC	Civil Procedure Code ( <i>Italy</i> )
CRE	Constitution of the Republic of Estonia 1992 ( <i>Eesti Vabariigi põhiseadus</i> ) ( <i>Estonia</i> )
CrimC	Criminal Code
CRB	Constitution of Republic of Bulgaria [Конституция на Република България]
CRP	Constitution of the Portuguese Republic
CRS	Constitution of the Republic of Slovenia
CT	Portuguese Labour Code (Código do Trabalho)
DStR	Deutsches Steuerrecht ( <i>Germany</i> )
Dz.U.	Dziennik ustaw ( <i>Poland</i> )
ECHR	European Convention on Human Rights
EF-Z	Zeitschrift für Familien- und Erbrecht ( <i>Austria</i> )
EMA	Electronic Messages Act [Закон за електронните съобщения] ( <i>Bulgaria</i> )
ER	Explanatory report ( <i>Czech Republic</i> )
ERCL	European Review of Contract Law
ESchG	Embryo Protection Act (Gesetz zum Schutz von Embryonen) ( <i>Germany</i> )
EvBl	Evidenzblatt der Rechtsmittelentscheidungen (in Österreichische Juristen-Zeitung)
FC	Family Code [Семеен кодекс] ( <i>Bulgaria</i> )
FLA	Family Law Act 2009 ( <i>Perekonnaseadus</i> ) ( <i>Estonia</i> )
GCC	Greek Civil Code
GG	Basic Law (Grundgesetz) ( <i>Germany</i> )

GP	Gesetzgebungsperiode ( <i>Austria</i> )
GPC	Greek Penal Code
GPCCA	General Part of the Civil Code Act 2002 ( <i>Tsiviilseadustiku üldosa seadus</i> ) ( <i>Estonia</i> )
GSP	Gdańskie Studia Prawnicze ( <i>Poland</i> )
HA	Health Act [Закон за здравето] ( <i>Bulgaria</i> )
HR	Hoge Raad (Supreme Court) ( <i>The Netherlands</i> )
IA	Inheritance Act [Закон за наследството] ( <i>Bulgaria</i> )
ICCPR	International Covenant on Civil and Political Rights
iFamZ	Interdisziplinäre Zeitschrift für Familienrecht ( <i>Austria</i> )
IJ	Interpretation Judgment [тълкувателно решение; TP] ( <i>Bulgaria</i> )
J	Judgment [решение; p.] ( <i>Bulgaria</i> )
JAP	Juristische Ausbildung und Praxisvorbereitung ( <i>Austria</i> )
JBl	Juristische Blätter ( <i>Austria</i> )
JUR	Case law database ( <i>Repertorio Aranzadi de Jurisprudencia</i> ) ( <i>Spain</i> )
k.c.	Kodeks cywilny ( <i>Poland</i> )
k.k.	Kodeks karny ( <i>Poland</i> )
KkrL	Konsumentkreditlagen (SFS 2010:1846)(Consumer Credit Act) ( <i>Sweden</i> )
k.p.c.	Kodeks postępowania cywilnego ( <i>Poland</i> )
k.r.o.	Kodeks rodzinny i opiekuńczy ( <i>Poland</i> )
LO	Organic Law ( <i>Ley Orgánica</i> ) ( <i>Spain</i> )
LOA	Law of Obligations Act 2002 ( <i>Võlaõigusseadus</i> ) ( <i>Estonia</i> )
LSMS	Law on Specific Medical Services ( <i>Czech Republic</i> )
Ltd.	Limited
MAP act	Medically Assisted Procreation Act (Procriação medicamente assistida) ( <i>Portugal</i> )
Mor	Morison's Dictionary ( <i>Scotland</i> )
NJ	Nederlandse Jurisprudentie ( <i>The Netherlands</i> )
NJA	Nytt Juridiskt Arkiv, avdelning 1 (Supreme Court Judgment) ( <i>Sweden</i> )
NJB	Nederlands Juristenblad ( <i>The Netherlands</i> )
NJW	Neue Juristische Wochenschrift ( <i>Germany</i> )
NSA	Naczelny Sąd Administracyjny ( <i>Poland</i> )
NZ	Österreichische Notariatszeitung ( <i>Austria</i> )
ÖBA	Österreichisches Bankarchiv ( <i>Austria</i> )
OCA	Obligation and Contracts Act [Закон за задълженията и договорите] ( <i>Bulgaria</i> )
OCC	Old Civil Code ( <i>Czech Republic</i> )

OGH	Oberster Gerichtshof (Supreme Court in civil and criminal matters) ( <i>Austria</i> )
ÖJZ	Österreichische Juristen-Zeitung ( <i>Austria</i> )
OSP	Orzecznictwo Sądow Polskich ( <i>Poland</i> )
PC	Penal Code
ProstG	Prostitution Act (Prostitutionsgesetz) ( <i>Germany</i> )
ProstSchG	Prostitute Protection Act (Prostitutionsschutzgesetz) ( <i>Germany</i> )
Poz.	Pozycja ( <i>Poland</i> )
R	Ruling [определение] ( <i>Bulgaria</i> )
RdW	Österreichisches Recht der Wirtschaft ( <i>Austria</i> )
RH	Rättsfall från hovrätterna (Appeal Court Judgments) ( <i>Sweden</i> )
RvdW	Rechtspraak van de Week ( <i>The Netherlands</i> )
SC	Session Cases ( <i>Scotland</i> )
SC	Supreme Court
SC/SCC	Supreme Court/Supreme Cassation Court of Bulgaria [Върховен съд/Върховен касационен съд] ( <i>Bulgaria</i> )
SC CR	Supreme Court of the Czech Republic
SC SR	Supreme Court of the Slovak Republic
Sez. Tributaria	Italian Supreme Court (tax division) ( <i>Italy</i> )
Sezioni Unite	Sezioni Unite (plenary session) ( <i>Italy</i> )
SFS	Svensk Författningssamling ( <i>Sweden</i> )
SLT	Scots Law Times ( <i>Scotland</i> )
SN	Sąd Najwyższy ( <i>Poland</i> )
SR	Slovak Republic ( <i>Slovakia</i> )
Sr	Wetboek van Strafrecht (Penal Code) ( <i>The Netherlands</i> )
Stb	Staatsblad van het Koninkrijk der Nederlanden ( <i>The Netherlands</i> )
StGB	Criminal Code (Strafgesetzbuch) ( <i>Germany</i> )
SvJT	Svensk Juristtidning (Swedish Law Gazette) ( <i>Sweden</i> )
SZ	Entscheidungen des österreichischen Obersten Gerichtshofes in Zivilsachen ( <i>Austria</i> )
TBBR	Tijdschrift voor Belgisch Burgerlijk recht ( <i>Belgium</i> )
VfGH	Verfassungsgerichtshof (Austrian Constitutional Court) ( <i>Austria</i> )
WSA	Wojewódzki Sąd Administracyjny ( <i>Poland</i> )
Wyd.	Wydawnictwo ( <i>Poland</i> )
Zak	Zivilrecht aktuell ( <i>Austria</i> )
ZIP	Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis ( <i>Germany</i> )
ZPO	Code of Civil Procedure (Zivilprozessordnung) ( <i>Germany</i> )



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