

## THE ACQUISITION OF IMMOVABLES THROUGH LONG-TERM USE

## The Common Core of European Private Law Series

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THE ACQUISITION  
OF IMMOVABLES THROUGH  
LONG-TERM USE

*Edited by*  
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## GENERAL EDITORS' PREFACE

It is a special pleasure to welcome the 20th book in the series *The Common Core of European Private Law*, published by Intersentia. This book is edited by two scholars, who together represent two different legal cultures: the German and the South African. 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 to thorough 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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Hastings College of Law

## PREFACE

It was during the annual conference of the Common Core of European Private Law, held in Lecce in the autumn of 2016, when we decided to launch a project – under the auspices of the Common Core – on acquisitive prescription. As both of us specialise in acquisitive prescription law in our respective jurisdictions, we wanted to undertake a major comparative project on this legal field in collaboration with a group of reporters from across the globe.

By the spring of 2017, we had gathered an excellent team of reporters, who, including the two editors, eventually represented 19 legal systems. We have been fortunate to work with extremely reliable and diligent reporters. Prior to the 2017 Common Core meeting, the reporters had already provided us with an outline of how non-owners who use another person's land could acquire ownership of it through the mere passage of time. It quickly became apparent that in Europe, and beyond, acquisitive prescription and adverse possession, its common-law equivalent, were not common to all the jurisdictions under investigation and there were several different ways in which users could acquire other people's land through the passage of time. As such, the overarching theme of the project became the acquisition of immovables through long-term use. Based on the outlines we formulated, in conjunction with the reporters, we developed a case-based questionnaire on this topic. This questionnaire was approved by the general editors of the Common Core at the 2017 annual meeting.

In the following two years, the reporters provided solutions to the ten cases in the questionnaire from the perspective of their respective jurisdictions. Where necessary, we adjusted the questionnaire and went through several rounds of editing. We have very fond memories of the conference on acquisitive prescription that we hosted in Groningen during 2018. The discussions on the project and acquisitive prescription, as well as the memorable Sardinian dinner, gave this project a boost and resulted in the publication of a book (B. Hoops & E.J. Marais, *New Perspectives on Acquisitive Prescription* (2019) Eleven International Publishing), which contains chapters on various problems concerning acquisitive prescription and adverse possession.

Towards the end of 2019, we had written the introduction and the comparative analyses to the present book. Unfortunately, the COVID-19 pandemic rocked the world at the beginning of 2020 and academic life, as we knew it, was thrown into turmoil. Online teaching and working from home took their toll on the research of all persons involved. These matters made it impossible to publish the

book during 2020, as originally planned. Nonetheless, with renewed energy we managed to finish the book in the spring of 2021.

To many law students, acquisitive prescription and adverse possession are either boring (“the prescription period is longer than I have lived”) or disconcerting (“how can you reward a thief with ownership?”). However, as this book demonstrates, acquisitions through long-term use are linked to exciting and fundamental legal and social issues. Such acquisitions enable, for example, users in need to acquire legal title in land after years of insecurity. They thus pose the fundamental question of under what conditions non-owners acting in bad faith should acquire land after using it for a long period of time and whether long-term occupation and use, as well as cultural, emotional or social attachment to a certain place, should trump legal title. Also, particularly in countries with no or unreliable systems of land registration, acquisitions through long-term use may be the only way, even for rightful owners, to prove their legal title conclusively.

We are indebted to the general editors of the Common Core, Professors Ugo Mattei and Mauro Bussani, as well as our 17 fellow reporters who did a marvellous job, even during the pandemic. We also wish to express our gratitude to the editors at Intersentia for the professional and smooth publishing process. Sincere thanks are due to Mr. Yassine Hasnaoui, Master’s student at the University of Groningen, for adjusting the text to the Intersentia style guidelines.

We dedicate this book to the memory of Professor A.J. van der Walt (1956–2016), mentor and inspirer to many scholars around the globe.

Björn Hoops and Ernst J. Marais  
Groningen and Johannesburg,  
August 2021



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# LIST OF ABBREVIATIONS

## INTRODUCTION

A1P1	Article 1 of the First Protocol to the European Convention on Human Rights
AC	Appeal Cases
Ch	Law Reports, Chancery Division
ECtHR	European Court of Human Rights
EHRR	European Human Rights Report
EWCA	England and Wales Court of Appeal
LR	Lloyd's Law Reports
QB	Law Reports, Queen's Bench Division
UKHL	United Kingdom House of Lords
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie

## ALBERTA, CANADA

ABCA	Alberta Court of Appeal
ABQB	Court of Queen's Bench (Alberta)
ALRI	Alberta Law Reform Institute
BCCA	British Columbia Court of Appeal
BCSC	British Columbia Supreme Court
CanLii	Canadian Legal Information Institute
CCQ	Civil Code of Quebec
ONCA	Ontario Court of Appeal
PESCAD	Supreme Court of Prince Edward Island, Appeal Division
RSO	Revised Statutes of Ontario
SA	Statutes of Alberta
SBC	Statutes of British Columbia
SCC	Syndicat des conseillères et conseillers de la C.S.Q

SCR	Supreme Court Reports
TCC	Tax and Chancery Chamber
UKUT	United Kingdom Upper Tribunal

## BELGIUM

BCC	Belgian Civil Code
Cass.	Court of Cassation
Cass. fr.	French Court of Cassation
ed.	editor
L.Hyp.	Hypothecary Law ( <i>Loi Hypothécaire</i> )
Rb. (may be replaced by French equivalent Trib.)	rechtbank van eerste aanleg (court of first instance)
vol.	volume
Vred. (may be replaced by French equivalent J.P.)	vredegerecht (Justice of the peace)

## ENGLAND AND WALES

ECHR; A1P1	European Convention on Human Rights; Article 1 of the First Protocol
HRA 1998	Human Rights Act 1998
LA 1980	Limitation Act 1980§
LASPOA 2012	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LPA 1925	Law of Property Act 1925
LRA 1925	Land Registration Act 1925
LRA 2002	Land Registration Act 2002
LR(A)R 2008	Land Registration (Amendment) Rules 2008 (SI 2008/1919)
LR(A)R 2009	Land Registration (Amendment) Rules 2009 (SI 2009/1996)
LR(RTO) 1989	Land Registration, England and Wales: The Registration of Title Order 1989 (SI 1989/1347)
LRR 2003	Land Registration Rules 2003 (SI 2003/1417)

PEA 1977	Protection from Eviction Act 1977
TLATA 1996	Trusts of Land and Appointment of Trustees Act 1996

## FINLAND

CJP	Code of Judicial Procedure ( <i>Oikeudenkäymiskaari</i> )
CRE	Code of Real Estate ( <i>Maakaari</i> )
EC	Enforcement Code ( <i>Ulosottoakaari</i> )
HE	<i>Hallituksen esitys.</i> (Government Bill)
KKO	<i>Korkein oikeus.</i> (Supreme Court of Finland)
LLA	Land Lease Act ( <i>Maanvuokralaki</i> )

## FRANCE

CC	French Civil Code
crim.	<i>Cour de cassation, chambre criminelle</i> – French Criminal Chamber
ECHR	European Convention on Human Rights
Cass.	<i>Cour de cassation</i> – French Court of Cassation
CPCE	<i>Code des procédures civiles d'exécution</i> – Code of Civil Enforcement Procedures
CPC	<i>Code de procédure civile</i> – Code of Civil Procedure, France
C. const.	<i>Conseil constitutionnel</i> – French Constitutional Council
CE	<i>Conseil d'Etat</i> – French Council of State
civ.	<i>Cour de cassation, chambre civile</i> – French Civil Chamber (First, Second or Third)
QPC	<i>Question prioritaire de constitutionnalité</i> – Priority preliminary ruling on the issue of constitutionality
D.	<i>Recueil Dalloz</i> , Journal
Rép. civ. Dalloz	<i>Répertoire de droit civil Dalloz</i> , Encyclopedia
Defrénois	<i>Répertoire du Notariat Defrénois</i> , Journal
RTD civ.	<i>Revue trimestrielle de droit civil</i> , Journal
V°	<i>Verbo</i>
JCl Civil	<i>JurisClasseur Civil</i> , Encyclopedia
obs.	Observations
JCP (N)	<i>JurisClasseur Périodique, édition notariale</i> , Journal
JCP (G)	<i>JurisClasseur Périodique, édition générale</i> , Journal

AJDI	<i>Actualité Juridique de Droit Immobilier</i> , Journal
JCl Administratif	<i>JurisClasseur Administratif</i> , Encyclopedia
CG3P	<i>Code général de la propriété des personnes publiques</i> – General Code of Property of Public Persons
CAA	<i>Cour administrative d'appel</i> – Administrative Court of Appeal
RDI	<i>Revue de Droit Immobilier</i> – Land Law Journal

## GERMANY

BGB	<i>Bürgerliches Gesetzbuch</i> (German Civil Code)
MüKo	<i>Münchener Kommentar</i> (German commentary)
NZM	<i>Neue Zeitschrift für Miet- und Wohnungsrecht</i> (German housing law journal)
ZPO	<i>Zivilprozessordnung</i> (German Civil Procedure Code)

## IRELAND

AC	Appeal Cases
All ER	All England Reports
Ch	Law Reports, Chancery Division
CJ	Chief Justice
Edn	edition
EHRR	European Human Rights Reports
Ex D	Law Reports, Exchequer Division
HC	High Court
ICLR	Irish Common Law Reports
IEHC	High Court of Ireland [Neutral Citation]
IESC	Supreme Court of Ireland [Neutral Citation]
ILRM	Irish Law Reports Monthly
IR	Irish Reports
LR Ch App	Law Reports, Chancery Appeal Cases
LRC	Law Reform Commission
LT	Law Times Reports
M & W	Meeson and Welsby's Exchequer Reports

No	Number
P & C	Prideaux and Cole's Reports
P & CR	Property and Compensation Reports
Para	paragraph
PRA	Property Registration Authority
Pt	Part
QB	Queens Bench
S	section
SC	Supreme Court
Sch	Schedule
SS	sections
UKHL	United Kingdom House of Lords

## ITALY

C.C.	<i>Codice civile</i> (Italian Civil Code)
Cass. civ.	<i>Cassazione</i> (Italian Supreme Court, Civil law section)
Cass. pen.	<i>Cassazione</i> (Italian Supreme Court, Criminal law section)
Corte Cost.	<i>Corte Costituzionale</i> (Italian Constitutional Court)
Dig. disc. priv., sez. civ.	<i>Digesto delle discipline privatistiche, sezione civile</i>
Enc. dir.	<i>Enciclopedia del diritto</i> , Encyclopedia
Enc. giur.	<i>Enciclopedia giuridica</i> , Encyclopedia
Eur. Prop. Law Journ.	European Property Law Journal
Eur. Rev. Priv. Law	European Review of Private Law
Giust. civ.	<i>Giustizia civile</i> , Journal
legge tavolare	<i>Regio decreto n. 499/1929</i>
Noviss. dig. it.	<i>Novissimo digesto italiano</i> , Encyclopedia
Nuova g. civ. comm.	<i>Nuova giurisprudenza civile commentata</i> , Journal
P.C.	<i>Codice penale</i> (Italian Penal Code)
Quad. cost.	<i>Quaderni costituzionali</i> , Journal
Quad.	<i>Quadrimestre</i> , Journal
Riv. dir. civ.	<i>Rivista di diritto civile</i> , Journal
Vita not.	<i>Vita notarile</i> , Journal

## LOUISIANA, UNITED STATES

La.	Louisiana Supreme Court
La. App.	Louisiana Court of Appeal
La. Civ. Code	Louisiana Civil Code
La. Code Civ. Proc.	Louisiana Code of Civil Procedure
La. Const.	Louisiana Constitution
La. Rev. Stat.	Louisiana Revised Statute
PRD	Public Records Doctrine

## NETHERLANDS

DCC	Dutch Civil Code ( <i>Burgerlijk Wetboek</i> )
DCL	Dutch Cadaster Law ( <i>Kadasterwet</i> )
ECHR	European Convention on Human Rights
HR	Supreme Court ( <i>Hoge Raad</i> )
MvA	Memorandum of Reply ( <i>Memorie van Antwoord</i> )
NJ	Dutch Case Law Journal ( <i>Nederlandse Jurisprudentie</i> )

## NORWAY

HL	Acquisitive Prescription Act - ' <i>Lov om hevd (Hevdslova)</i> ' av 9. desember 1966 nr. 1
RG	<i>Rettens Gang</i> (Norwegian district and appeals court reports)
Rt.	<i>Norsk Retstidende</i> (Norwegian Supreme Court reports)

## POLAND

GCL	Geodesy and Cartography Law 1989 as amended
LON	Law on Notaries 1991 as amended
LRM	Land Register and Mortgages Act 1982 as amended
PCC	Polish Civil Code 1964 as amended
PCPC	Polish Civil Procedure Code 1964 as amended
PRA	Public Roads Act 1985 as amended



TID	Tax on Inheritance and Donations Act 1983 as amended
TPA	Tenants Protection Act 2001 as amended

## RUSSIA

CAU RF	Code of Administrative Unlawful Acts of the Russian Federation
CC RF	Civil Code of the Russian Federation
CPC RF	Civil Procedure Code of the Russian Federation
LC RF	Land Code of the Russian Federation
RF	Russian Federation
RSFSR	Russian Soviet Federate Socialist Republic
UPRIP	United Public Register of Immovable Property

## SCOTLAND

1973 Act	Prescription and Limitation (Scotland) Act 1973
2012 Act	Land Registration etc (Scotland) Act 2012
CSOH	Court of Session, Outer House
D	Dunlop's Session Cases (Reports of the Court of Session, Scotland)
ECHR	European Convention on Human Rights
Keeper	Keeper of the Registers of Scotland
Mor	Morrison's Dictionary of Decisions, Court of Session
QLTR	Queen's and Lord Treasurer's Remembrancer
SAC (Civ)	Sheriff Appeal Court (Civil)
SC	Session Cases (Reports of the Court of Session, Scotland)
SC (HL)	Session Cases, House of Lords (Reports of the House of Lords, Scotland)
SLT	Scots Law Times

## SLOVAKIA

SlovCC	Civil Code – Law No. 40/1964 Coll. Civil Code as amended
ConC SR	Decision of the Constitutional Court of the Slovak Republic

CommC	Commercial Code – Law No. 513/1991 Coll. Commercial Code as amended
Constitution	Act No. 460/1992 Coll. Constitution of the Slovak Republic as amended
ECHR R	European Convention on Human Rights reported decision or opinion, published until 1992 in Collection of Decisions and Opinions of the Unitary or Federal Supreme Court and since 1993 published in the Collection of Court Decisions or Opinions of the Supreme Court of the Slovak Republic
SC CR	Decision of the Supreme Court of the Czech Republic
SC SR	Decision of the Supreme Court of the Slovak Republic
SR	Slovak Republic

## SOUTH AFRICA

A	Appellate Division of the Supreme Court
AD	Appellate Division of the Supreme Court
All SA	All South African Law Reports
C	Cape Provincial Division of the Supreme Court
CC	Constitutional Court or Close Corporation
Conn L Rev	Connecticut Law Review
D	Durban and Coast Local Division of the Supreme Court
Ed	Edition
Eds	Editors
EPLJ	European Property Law Journal
Fn	Footnote
JDR	Juta's Daily Law Reports
LAWSA	The Law of South Africa
LLD	<i>Doctor Legum</i> (Doctor of Laws)
Ltd	Limited
N	Natal Provincial Division of the Supreme Court
NC	Northern Cape Division of the Supreme Court
NNO	<i>Nomine officii</i> (in their official capacity)
NO	<i>Nomine officio</i> (in his/her official capacity)
O	Orange Free State Division of the Supreme Court

Par(a)	Paragraph
Paras	Paragraphs
PELJ	Potchefstroom Electronic Law Journal
Pty	Proprietary
R	Regulation
SA	South African Law Reports
SC	Supreme Court
SCA	Supreme Court of Appeal
Stell LR	Stellenbosch Law Review
t/a	Trading as
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law)
TPD	Transvaal Provincial Division
TSAR	Tydskrif vir die Suid-Afrikaanse Reg (Journal of South African Law)
Vol	Volume
W	Witwatersrand Local Division of the Supreme Court

## SPAIN AND CATALONIA

Art.	article
Arts.	Articles
BOE	<i>Boletín Oficial del Estado</i> (Spanish Official Journal)
CC	Cat Catalan Civil Code
CC	Civil Code
cf.	compare
DOGC	<i>Diari Oficial de la Generalitat de Catalunya</i> (Catalan Official Journal)
e.g.	<i>exempli gratia</i>
et seq.	<i>et sequens</i>
i.e.	<i>id est</i>
LEC	Spanish Law of Civil Procedure
no.	number
SC	Supreme Court
STSJC	Catalan Supreme Court Judgment

## SWEDEN

HFD	<i>Högsta förvaltningsdomstolen</i> (Supreme Administrative Court of Sweden)
NJA	<i>Nytt Juridiskt Arkiv</i> (Reports from the Supreme Court of Sweden)
Prop.	<i>Proposition</i> (Legislative bill)
SEA	Swedish Enforcement Agency
SOU	<i>Statens Offentliga Utredningar</i> (Official Reports of the Swedish Government)

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