

INTERPRETATION OF COMMERCIAL CONTRACTS  
IN EUROPEAN PRIVATE LAW

The Common Core of European Private Law Series

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INTERPRETATION  
OF COMMERCIAL CONTRACTS  
IN EUROPEAN PRIVATE LAW

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## Interpretation of Commercial Contracts in European Private Law

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## GENERAL EDITORS' PREFACE

It is a special pleasure to welcome the 18th book in the series *The Common Core of European Private Law*, the first published by Intersentia. This book is edited by three scholars, who together represent two different legal cultures: the Dutch and the Scottish. 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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Jaap Baaij  
David Cabrelli  
Laura Macgregor





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## LIST OF ABBREVIATIONS

A	Appellate Division
AC	Appeal Cases (UK)
AC (HL)	Appeal Cases, House of Lords (UK)
AD	Appellate Division (1910–1946)
AJA	Acting Judge of Appeal
All ER	All England Law Reports (England and Wales)
All SA	All South African Law Reports
AP	Ἀρειος Πάγος (Greek Supreme Court)
ArchNom	Archeion Nomologias (Ἀρχεῖο Νομολογίας; Greek law journal)
Arm	Armenopoulos (Ἀρμενόπουλος; Greek law journal)
Art(s).	article(s)
B & Ad	Barnewall & Adolphus (England and Wales)
B2B	Business-to-business
B2C	Business-to-consumer
BGB	Bürgerliches Gesetzbuch [Civil Code] (Germany)
BLR	Building Law Reports (UK)
Bpk	Beperk [Limited]
Bull. civ.	Bulletin civil
BW	Burgerlijk Wetboek (Netherlands)
C	Cape Provincial Division (South Africa)
CA	Cour d'appel [Court of Appeal] (France)
CA	Appellate Court [Εφετείο] (Greece)
CAO	Collectieve arbeidsovereenkomst [collective employment contract]
CC	Civil Code (Greece, Portugal, Spain)
CC	Close Corporation (South Africa)
c.c.	Codice civile [Civil Code] (Italy)
cca.	Circa (approximately; about)
Cciv	Code civil [Civil Code] (France)
Ccom	Code de commerce [Commercial Code] (France)
CCom	Código de Comercio [Code of Commerce] (Spain)
CESL	Common European Sales Law

Ch D	Law Reports, Chancery Division (England and Wales)
Ch. réun.	Chambres réunies de la Cour de cassation (France)
ChrID	Chronika Idiotikou Dikaiou (Χρονικά Ιδιωτικού Δικαίου; Greek law journal) (Greece)
CISG	United Nations Convention on Contracts for the International Sale of Goods
Civ.	Chambre civile de la Cour de cassation (France)
CJ	Colectânea de Jurisprudência (Portugal)
CK	Sign indicating division of court (Poland)
CLR	Commonwealth Law Reports
COA	Civil Obligations Act (Croatia)
COJ	Code de l'organisation judiciaire [Code of the Judicial Organisation] (France)
Com.	Chambre commerciale de la Cour de cassation (France)
CPC	Code of Civil Procedure (Greece)
CSIH	Court of Session – Inner House (Scotland)
CSK	Sign indicating division of court (Poland)
CSOH	Court of Session – Outer House (Scotland)
CZP	Sign indicating division of court (Poland)
D.	Recueil Dalloz (France)
DCFR	Draft Common Frame of Reference
DEE	Dikaio Epiheiriseon kai Etairion (Δίκαιο Επιχειρήσεων και Εταιριών; Greek law journal)
Dike	Dike (Δίκη; Greek law journal)
DP	Deputy President (of the Supreme Court of Appeal)
ed(s).	Editor(s)
edn	Edition
EDPol	Epitheorisi Dikaiou Polykatoikias (Επιθεώρηση Δικαίου Πολυκατοικίας; Greek law journal)
EEmpD	Epitheorisi Emporikou Dikaiou (Επιθεώρηση Εμπορικού Δικαίου; Greek law journal)
EEN	Efimeris Ellinon Nomikon (Εφημερίς Ελλήνων Νομικών; Greek law journal)
EllD	Elliniki Dikeosyni (Ελληνική Δικαιοσύνη; Greek law journal)
EPoLD	Epitheorisi Politikis Dikonomias (Επιθεώρηση Πολιτικής Δικονομίας; Greek law journal)
ER	English Reports
EU	European Union
EWCA Civ	England and Wales Court of Appeal, Civil Cases
EWHC (Ch)	England and Wales High Court, Chancery Division Cases
EWHC (Comm)	England and Wales High Court, Commercial Cases

EWHC (Pat)	England and Wales High Court, Patent Cases
EWHC (QB)	England and Wales High Court, Queen's Bench Division Cases
F	Fraser's Session Cases (Scotland)
Fasc.	Fascicule [booklet] (France)
GAJC	Les grands arrêts de la jurisprudence civile (France)
GGI	Government Gazette Issue (Φύλλο Εφημερίδας Κυβερνήσεως) (Greece)
GP	Gazette du Palais (France)
GSJ	South Gauteng High Court, Johannesburg
GTC	General Terms and Conditions
GWD	Green's Weekly Digest
HGB	Handelsgesetzbuch [German Commercial Code] (Germany)
HL	House of Lords (UK)
Hous LR	Housing Law Review (UK)
IA	International Agreements
Inc.	Incorporated
Isocrates	Law database of the Athens Bar Association
JA	Judge of Appeal
JAR	Jurisprudentie arbiedsrecht (Netherlands)
JCl. Civil Code	Juris-classeur Civil Code (France)
JCP G	Juris-Classeur périodique (Semaine juridique), édition générale (France)
JDI	Journal du droit international (France)
JOR	Jurisprudentie ondernemingsrecht (Netherlands)
KB	Law Reports, King's Bench Division Cases (England and Wales)
KC	Kodeks Cywilny [Polish Civil Code]
KKO	Korkein oikeus (Supreme Court of Finland)
KM	Komitean mietintö (committee report) (Finland)
KZP	KwaZulu-Natal High Court, Pietermaritzburg (South Africa)
LEC	Ley de Enjuiciamiento Civil [Civil Procedure Act] (Spain)
LGCGC	Ley General de Condiciones, Generales de la Contratación [Standard Contracts Act] (Spain)
Lloyd's Law Rep	Lloyd's Law Reports (England and Wales)
Lloyd's Law Rep (CA)	Lloyd's Law Reports, Court of Appeal Cases (England and Wales)
LR Eq	Law Reports, Equity Cases (England and Wales)
m.n.	Margin number
n(n).	(foot)note(s)

N	Natal Provincial Division (South Africa)
NJ	Nederlandse Jurisprudentie (Netherlands)
NJA	Nytt juridiskt arkiv I (Sweden)
NN	Narodne novine (Croatia)
NO/NNO	nomine officio/nomine officii [in the name of office] (South Africa)
no(s).	number(s)
NOMOS	Greek law database
NoV	Nomiko Vima (Νομικό Βήμα; Greek law journal)
NSWCA	New South Wales Court of Appeal (Australia)
NSWLR	New South Wales Law Reports (Australia)
OG	Official Gazette
OJ	Official Journal
para(s).	Paragraph(s)
PC	Privy Council (Commonwealth and UK Overseas Territories)
PD	Presidential Decree (Προεδρικό Διάταγμα) (Greece)
PD	Law Reports, Probate, Divorce and Admiralty Division (Scotland)
PECL	Principles of European Contract Law
PPH	Przegląd Prawa Handlowego [Commercial Law Review] (Poland)
PS	Privredni sud [Commercial Court] (prior to 1991) (Croatia)
(Pty) Ltd	(Proprietary) Limited
QBD	Law Reports, Queen's Bench Division Cases (England and Wales)
R	Rettie's Session Cases (Scotland)
R (HL)	Rettie's Reports, House of Lords (Scotland)
RCb	Tribunal da Relação de Coimbra (Portugal)
RCR	Rechtspraak contractenrecht (Netherlands)
RDC	Revue des contrats (France)
Req.	Chambre des requêtes de la Cour de cassation (France)
rev.	Revised
RH	Republic of Croatia
RJ	Repertorio Jurisprudencia Aranzadi (Spain)
RLx	Tribunal da Relação de Lisboa (Portugal)
RTDCiv	Revue trimestrielle de droit civil (France)
Rv	Wetboek van Burgerlijk Rechstvordering (Netherlands)
RvdW	Rechtspraak van de Week (Netherlands)
S.	Recueil Sirey (France)
SA	South African Law Reports
SC	Session Cases (Scotland)

SC (HL)	Session Cases, House of Lords (Scotland)
SC (UKSC)	Session Cases, United Kingdom Supreme Court (Scotland)
SCA	Supreme Court of Appeal (South Africa)
(S)CFI	(Single-member) Court of First Instance ((Μονομελές) Πρωτοδικείο) (Greece)
SCLR	Scottish Civil Law Reports
SE	South Eastern Cape Local Division (South Africa)
SFRY	Socialistic Federative Republic of Yugoslavia
SLT	Scots Law Times
SLT (Notes)	Scots Law Times, Notes of Decisions
SN	Sąd Najwyższy [Supreme Court of Poland]
SOU	Statens offentliga utredningar (Sweden)
STJ	Supremo Tribunal de Justiça [Supreme Civil Court] (Portugal)
STS	Sentencia del Tribunal Supremo [Supreme Court Decision] (Spain)
T/TPD	Transvaal Provincial Division
t/a	trading as
TS	Trgovački sud [Commercial Court] (Croatia)
TS	Tribunal Supremo [Supreme Court] (Spain)
UKSC	United Kingdom Supreme Court
US	Upravni sud [Administrative Court] (Croatia)
USRH	Ustavni sud Republike Hrvatske [Constitutional Court of the Republic of Croatia]
vol.	Volume
VRSH	Vrhovni sud Republike Hrvatske [Supreme Court of the Republic of Croatia]
VTSRH	Visoki trgovački sud Republike Hrvatske [High Commercial Court of the Republic of Croatia]
W	Witwatersrand Local Division
W & S	Wilson & Shaw, House of Lords, Appeal Cases (Scotland)
WCC	Western Cape High Court, Cape Town (South Africa)
WLD	Witwatersrand (Transvaal) Local Division (South Africa)
WLR	Weekly Law Reports (England and Wales)
WLR (HL)	Weekly Law Reports, House of Lords Cases (England and Wales)
WLR (PC)	Weekly Law Reports, Privy Council (Commonwealth and UK Overseas Territories)
ZASCA	South Africa: Supreme Court of Appeal (judgmentsonline)
ZPO	Zivilprozessordnung [Code of Civil Procedure] (Germany)





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Jaap Baaij is Assistant Professor at Leiden Law School. In 2018, Jaap obtained a doctorate degree at Yale Law School on contract law and commercial arbitration and a PhD degree, cum laude, at Amsterdam Law School on linguistic diversity and legal harmonisation in the European Union. Previously, he was Assistant Professor of Private Law at Amsterdam Law School and Visiting Scholar at Columbia Law School and the National University of Singapore Faculty of Law. He was also a guest lecturer at various universities in Europe and the United States, including London School of Economics, Yale Law School, and Princeton University. Jaap's publications include, among others, articles in the *Harvard International Law Journal* and *King's Law Journal*, and books with Oxford University Press and Kluwer Law International.

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