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978-1-107-09389-8 - European Condominium Law
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European Condominium Law

This is the first comprehensive comparative treatment of condominium (apartment ownership, commonhold, horizontal property) law covering 21 European jurisdictions. This book explores the genesis of condominium law in Europe and in each of the jurisdictions represented and the use made of the condominium format to structure residential, commercial, industrial and tourist condominiums. It examines the establishment of condominiums; basic condominium concepts and the role by-laws play in establishing harmony in a condominium. Included are ten case studies, which illustrate a variety of factual scenarios and focus on providing legal solutions to practical cases. The scenarios include, among others, the legal consequences of a sale of apartments from building plans; restrictions on the sale and letting of apartments; the keeping of pets and the conduct of a profession (e.g. a medical practice) in an apartment; the sanctions against defaulters of contributions; and the requirements for undertaking maintenance and improvements.

CORNELIUS VAN DER MERWE is a Senior Research Fellow at the University of Stellenbosch and Professor Emeritus of Civil Law of the University of Aberdeen. He is considered a world authority on condominium law and has written extensively on strata title schemes and the law of property in national and international law journals.

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The Common Core of European Private Law

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For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality *The Common Core of European Private Law Project* was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union member states. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

A list of books in the series can be found at the end of this volume.

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CAMBRIDGE
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University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107093898

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First published 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

European condominium law / edited by Cornelius Van Der Merwe.
pages cm - (The common core of European private law)

Includes bibliographical references and index.

ISBN 978-1-107-09389-8 (Hardback)

1. Condominiums--Law and legislation--Europe. I. Van der Merwe, C. G., editor.

KJC1340.E97 2015

346.404'33--dc23 2014039049

ISBN 978-1-107-09389-8 Hardback

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General editors' preface

This is the thirteenth book in the series *The Common Core of European Private Law* published within *Cambridge Studies in International and Comparative Law*. The 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 Trento project is novel. 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 comparison 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 when more volumes are published. The availability of materials attempting a genuine analysis of how things are 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. The analytical work carried on today by the almost 200 scholars involved in the Common Core Project is also a precious asset of knowledge and legitimisation for any such normative enterprise.

We must thank the editors and contributors to these first published results. 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 Italian Ministry of Scientific Research is funding the project, having recognised it as a 'research of national interest'. The International

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GENERAL EDITORS' PREFACE XV

University College of Turin with the Compagnia di San Paolo and the Consiglio Nazionale del Notariato allow us to organise the General Meetings. The European Commission has partially sponsored some of our past general meetings, having included them in their High Level Conferences Program. The University of Torino, the University of Trieste, the Fromm Chair in International and Comparative Law at the University of California and the Hastings College of Law, the Centro Studi di Diritto Comparato of Trieste, have all contributed to the funding of this project. Last but not least, we must thank all those involved in our ongoing Trento projects in contract law, property, tort and other areas the results of which will be the subject of future published volumes.

Our home page on the internet is at <http://www.iuctorino.it>. There you can follow our progress in mapping the common core of European private law.

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Hastings College of Law

Honorary Editor

Rudolfo Sacco, University of Turin

Late Honorary Editor

Rudolf B. Schlesinger, Cornell University - University of
California, Hastings

Preface

Condominium law has never before been the subject of a Common Core project. This can be partly attributed to the common perception that condominium law is simply a set of practical rules designed to solve daily problems in condominium schemes, and is therefore not worthy of detailed academic scrutiny. Additionally, condominium law is principally based on statutory law rather than fundamental concepts of property law. Nevertheless, it has proved to be an excellent topic, which lends itself to discussion of hypothetical scenarios. In many ways this is preferable to the abstract presentation of legal systems by reference to principles, rules and exceptions to the rules.

The project was initiated at the annual meeting of the Common Core Project in June 2009. The first draft of the questionnaire was discussed and eventually approved in an altered form in June 2010. National reporters from 21 jurisdictions contributed to the book. Western Europe is represented by national reporters from Belgium, Greece, Italy, France, Spain, Austria, Germany, the Netherlands, Portugal and Catalonia. This is the first Common Core book that includes both Spanish and Catalan reporters. Eastern European reporters were drawn from Poland, Slovenia and Croatia. The mixed legal systems are represented by a national reporter from Scotland and the editor of this book, the latter of which produced the South African report. Peter Smith acted as national reporter for the two common law jurisdictions, England and Ireland. Professors from Denmark, Norway and Sweden agreed to represent Scandinavia and we succeeded in persuading two national reporters from Estonia to ensure that the Baltic countries are also catered for in the book.

The book is arranged in three main sections, entitled 'Introduction and context', 'Case studies' and 'Recent developments'. The first

section deals with the genesis of European condominium law; the historical development of condominium legislation in each jurisdiction represented; the many forms of condominium including, among others, dockominiums (mooring spaces for yachts), hotel condominiums, graveyard sites and caravan sites condominiums; basic concepts of condominium law; and the role of by-laws and house rules in ensuring harmony within a condominium scheme. The case studies cover ten factual scenarios including, for example, the legal consequences of a purchase of apartments based on building plans; restrictions on the sale and letting of apartments; the responsibility for the maintenance of the land and buildings of a condominium scheme; the keeping of pets and the conduct of a profession (e.g. a medical profession) in an apartment; the sanctions against owners who default on their financial obligations or make life miserable for their neighbours within a condominium; the formal requirements for resolutions adopted at general meetings; and the requirements for undertaking maintenance and improvements of the condominium buildings. The book is concluded with a review of recent developments in European condominium law.

A special feature of the book is that the comparative observations containing a summary of the various reports are placed at the beginning instead of at the end of each case study, and are followed by the various responses of the national reporters of the jurisdictions represented. The idea is to give the reader a general idea of the various solutions offered before focusing on the national report or reports that he or she finds the most illuminating.

Like all volumes in this series, this book is a collective scholarly enterprise. I am grateful to all contributors who prepared their reports and discussed them at various annual meetings in Turin. The editor and those contributors who are not native English speakers owe a great debt of gratitude to Peter Smith, the author of the English and Irish reports, and John Townsend, my research assistant at the University of Aberdeen, for the linguistic editing of the book. Without their dedication and diligence the book would not have seen the light of day. I gratefully acknowledge the assistance of my research assistant at Stellenbosch, Carryn De Groot, for her never-ending correspondence with national reporters and for helping with the finalisation of the List of Statutes and the Bibliography in addition to my LLM student, Johannes Kersting, who translated the Austrian report into English. I wish to thank Manuela Amsler for organising the discussion groups

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at the yearly meetings of the Trento project at Turin. I am also grateful to Sinead Maloney, formerly from Cambridge University Press, for her unwavering encouragement and support and for concessions with regard to the length of the manuscript, together with the Cambridge University Press team for their technical editing of the final manuscript. Finally I want to acknowledge the assistance of the general editors Mauro Bussani, Ugo Mattei and Antonio Gambaro and the anonymous referee of this volume, whose advice helped to improve the final manuscript.

I am particularly thankful to the South African National Research Foundation for financial assistance with the project as well as to the German Alexander von Humboldt Foundation for making it possible for me to conduct research on condominiums at the Max Planck Institute for Comparative and Private International Law in Hamburg during 2012. Without their generous funding the volume would never have come to fruition.

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