

## **Transfer of Immovables in European Private Law**

The transfer of immovables in Europe creates a series of challenges and questions in practice. The increase in cross-border transactions of immovable property within the European Union has created a demand for knowledge of the system of land registration across a range of jurisdictions. This volume compares and contrasts the different legal processes of seventeen countries and includes a comprehensive analysis of the transfer of immovables and the Land Register in Europe. With fifteen case studies, it provides both theoretical and practical information on the applicable contract and land law. This volume encourages the reader to evaluate legal issues by using the wider European legal sources available. For this purpose, it is an important research tool for comparative study in the field.

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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 EU 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.*

# **Transfer of Immovables in European Private Law**

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*Edited by*

Luz M. Martínez Velencoso, Saki Bailey and  
Andrea Pradi



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-18709-2 – Transfer of Immovables in European Private Law  
Edited by Luz M. Martínez Velencoso, Saki Bailey, Andrea Pradi  
Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
4843/24, 2nd Floor, Ansari Road, Daryaganj, Delhi – 110002, India  
79 Anson Road, #06–04/06, Singapore 079906

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](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107187092](http://www.cambridge.org/9781107187092)

DOI: 10.1017/9781316941034

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First published 2017

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

*Library of Congress Cataloging-in-Publication Data*

Names: Martínez Velencoso, Luz M., author. | Bailey, Saki, author. | Pradi, Andrea, author.

Title: Transfer of immovables in European private law / Luz M. Martínez Velencoso, University of Valencia, Spain, Saki Bailey, Göteborgs Universitet, Sweden, Andrea Pradi, Università degli Studi di Trento, Italy.

Description: New York : Cambridge University Press, 2017. | Series: The common core of European private law

Identifiers: LCCN 2016052778 | ISBN 9781107187092 (Hardback)

Subjects: LCSH: Transfer (Law)–Europe. | Real property–Europe.

Classification: LCC KJC1265 .M37 2017 | DDC 346.404/36–dc23

LC record available at <https://lcn.loc.gov/2016052778>

ISBN 978-1-107-18709-2 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

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## General Editors' Preface

This is the sixteenth 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 EU 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 University College of Turin with the *Compagnia di San Paolo* and the

xxii      GENERAL EDITORS' PREFACE

Consiglio Nazionale del Notariato allow us to organize 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 whose results will be the subject of future published volumes.

Our home page on the internet is 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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## Preface

This volume is the result of many years of work of a group of researchers coming from different European countries inside The Common Core of European Private Law project.

This project began in July 2006 at the University of Trento in the framework of the 12th General Meeting of the ‘Common Core’ at a separate meeting of the Property Group headed by Professor Antonio Gambaro.

Soon afterwards, the ‘Transfer of Immovables Group’ (ToI Group) was formed out of those discussions in Trento and it initiated its work with a draft questionnaire, which was prepared by one of the editors, Luz M. Martínez Velencoso (University of Valencia), and Elizabeth Cooke (Reading University). After numerous meetings of the ToI Group engaging in heated discussions over the questionnaire, the group finally agreed on a definitive version to proceed to the next phase of designating reporters and beginning the process of answering the questionnaire.

In 2009, after having received a majority of the reports, the ToI Group met in a two-day conference that took place in Trento organised with the sponsorship of Colegio Nacional de registradores de la Propiedad y Mercantiles de España and Collegio Nazionale del Notariato. During these days the draft responses were discussed together with Professor Ugo Mattei, who brought new ideas for the volume. Meanwhile some reports had to be adapted because important legislative modifications had taken place in several countries – for instance, in England, Ireland and Scotland.

In July 2013 Andrea Pradi and Luz M. Martínez Velencoso met at the University of Trento for several weeks to work together on the reports and to conclude the comparative remarks from the case studies. In the

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same year, Saki Bailey was added to the editorial board to incorporate the perspective of the common law and coordinate the project in its final stage.

We would like to thank all the contributors for making this publication possible. This volume represents a tremendous amount of research on the subject, perhaps never before achieved at this level of depth and academic rigour. We would like also to extend a warm thanks to Ugo Mattei, the General Editor of the Common Core, who was present in the whole process, to Elizabeth Cooke, for her initial help, and to Abigael Ogada-Osir for her assistance in the final editing process.

## Abbreviations

ABGB	<i>Allgemeines bürgerliches Gesetzbuch</i> (Civil Code, Austria)
Abs	<i>Absatz</i>
AC	Appeal Cases
AcP	<i>Archiv für die civilistische Praxis</i>
AER	<i>American Economic Review</i>
All ER	<i>All England Law Reports</i>
AllGAG	<i>Allgemeines Grundbuchsanlegungsgesetz</i> , Austrian Statute on the Formation of a Big Book in the Land Registry
AnfO	<i>Anfechtungsordnung</i> (Statute on Rescission, Austria)
App.	Appeal
App. Cas.	Appeal Cases
Arch. Locazioni art.	<i>Archivio Locazioni</i> article
ARTL	Automated Registration of Title to Land
BCC	Civil Code (Belgium)
BeurkG	<i>Beurkundungsgesetz</i>
BFD	<i>Boletim de Faculdade de Direito</i> (Coimbra)
BGB	<i>Bürgerliches Gesetzbuch</i> (Civil Code, Germany)
BGBL.	<i>Bundesgesetzblatt</i>
BGH	<i>Bundesgerichtshof</i>
BGHZ	<i>Entscheidungen des Bundesgerichtshofs in Zivilsachen</i>
Bing. NC	<i>Bingham's New Cases</i>
BTVG	<i>Bau-träger-vertragsgesetz</i> (Building Developer's Contracts Act, Austria)
Bull. civ.	<i>Bulletin civil de la Cour de cassation</i>
BW	<i>Burgerlijk Wetboek</i> (Civil Code, the Netherlands)



xxvi LIST OF ABBREVIATIONS

Cass.	<i>Cour de Cassation</i> (in French report)
CC	Civil Code
C. civ.	<i>Code civil</i> (Civil Code, France)
CC Proc.	Code of Civil Procedure (Greece)
CED	Electronic Documentation Centre (Supreme Court of Cassation)
Ch.	Chancery Division Reports (in English report)
Ch.	<i>Recueil Dalloz Chroniques</i> (in French report)
Ch. D.	<i>Chancery Division Reports</i> (1875–90)
Civ.	<i>Cour de Cassation</i> , French Civil Chamber (First, Second or Third)
CLJ	<i>Cambridge Law Journal</i>
CLR	<i>Cambridge Law Reports</i>
CPC	Civil Procedure Code (Portugal)
CSIH	Court of Session, Inner House (Scotland)
D.	<i>Diki</i> (in Greek report)
D.	<i>Recueil Dalloz</i> (in French report)
DR	<i>Diário da República</i> (Official Gazette, Portugal)
DRPA	Act on the Distribution of Real Property (Denmark)
DULJ (NS)	<i>Dublin University Law Journal</i> (New Series)
EEA	European Economic Area
Edin. LR	<i>Edinburgh Law Review</i>
EfSIG	<i>Ehe und familienrechtliche Entscheidungen</i> (Austrian Report)
EG	<i>Estates Gazette</i>
EGBGB	<i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i> (Introductory Act to the Civil Code, Germany)
EGLR	<i>Estates Gazette Law Reports</i>
EheG	<i>Ehegesetz</i>
ELRA	European Land Registry Association
EnEG	<i>Energieeinsparungsgesetz</i> (Germany)
EnEV	<i>Energieeinsparverordnung</i> (Germany)
ER	English Reports
ERPL	<i>European Review of Private Law</i>
EU	European Union
EULIS	European Land Information Service
EvBl	<i>Evidenzblatt der Rechtsmittelentscheidung</i>
EWCA	Court of Appeal of England and Wales
EWHC	England and Wales High Court Cases
FLA	Family Law Act

FLR	<i>Family Law Reports</i>
Foro it.	<i>Foro Italiano</i>
Fw	<i>Faillissementswet</i> (Insolvency Code, the Netherlands)
Gaz. Pal.	<i>La Gazette du Palais</i>
GBG	<i>Grundbuchsgesetz</i> (Code on Land Registry, Austria)
GBO	<i>Grundbuchordnung</i> (Land Register Code, Germany)
GBV	<i>Verordnung zur Durchführung der Grundbuchordnung</i> (Germany)
GCC	Civil Code, Greece
GCCP	Code of Civil Procedure, Germany
GIU	<i>Glaser-Unger Sammlung von zivilrechtlich Entscheidungen des k.k. Obersten Gerichtshofes</i> <i>Civilsachen</i> (in Austrian report)
Giur. It	<i>Giurisprudenza italiana</i>
GVB	<i>Gesetz- und Verordnungsblatt</i> (in German report)
GZ	<i>Gerichts-Zeitung</i> (in Austrian report)
HCA	<i>Commonwealth Law Reports</i>
HE	<i>Government Bill</i> (Finland)
HGB	<i>Handelsgesetzbuch</i> (Commercial Code, Germany)
HL	Judicial Committee of the House of Lords
HR	<i>Hoge Raad</i> (Supreme Court, Netherlands)
H(S)A	Housing (Scotland) Act
IA	Insolvency Act
ICC	Civil Code (Italy)
IEHC	<i>Irish High Court Reports</i>
ILRM	<i>Irish Law Reports Monthly</i>
ILTR	<i>Irish Law Times Reports</i>
IMI	<i>Imposto Municipal sobre Imóveis</i> (Municipal property tax, Portugal)
ImmZ	<i>Immobilien Zeitung</i>
IMT	<i>Imposto sobre Transmissões Onerosas de Imóveis</i> (Tax on transmission of real estate, Portugal)
InsO	<i>Insolvenzordnung</i> (Insolvency Act, Germany)
IPR	Immovable Property Register (Italy)
IR	<i>Irish Reports</i>
iVm	<i>International Arbitration Law Reports</i>
JBI	<i>Juristische Blätter</i>
JCP	<i>Juris-Classeur Périodique</i>
KB	<i>King's Bench Division Reports</i>
KKO	<i>Korkein oikeus</i> (Supreme Court, Finland)

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KM	<i>Committee Report</i> (Finland)
KO	Konkursordnung
LCA	Land Charges Act
LgsD	Legislative Decree
LH	<i>Ley Hipotecaria</i> (Mortgage Act, Spain)
LJN	<i>Landelijk Jurisprudentie</i>
Lloyd's Rep.	<i>Lloyd's Law Reports</i>
LPA	Law of Property Act
LP(MP)A	Law of Property (Miscellaneous Provisions) Act
LQR	<i>Law Quarterly Review</i>
LR	Land Register
LRA	Land Registration Act
LRegC	<i>Código do Registo Predial</i> (Land Registration Code, Portugal)
LR Ir.	<i>Irish Law Reports</i>
LRR	Land Registration Rules
LR(S)A	Land Registration (Scotland) Act
LTR(S)A	Land Tenure Reform (Scotland) Act
MaBV	<i>Makler- und Bauverträgerverordnung</i> (Broker and Contractor Regulation, Germany)
MLJ	<i>Maastricht Law Journal</i>
MLR	<i>Modern Law Review</i>
MR	Master of the Rolls
MRG	<i>Mietrechtgesetz</i> (Code on Tenant Law, Austria)
mwN	<i>mit weiteren Nachweise</i> (With further proofs)
My. & K.	<i>Mylne &amp; Keen's Chancery Reports</i>
NI	<i>Northern Ireland Law Reports</i>
NJ	<i>Nederlandse jurisprudentie</i>
NJA	<i>Nytt juriskt arkiv</i> (Supreme Court cases, Sweden)
NJW	<i>Neue Juristische Wochenschrift</i>
NotC	<i>Código do Notariado</i>
NOU	<i>Official Norwegian Reports</i>
Nuova Giur. Civ. Comm.	<i>Nuova Giurisprudenza Civile Commentata</i>
Ob	<i>Oberster Gerichtshof</i> (in Austrian report)
obs.	observations
OGH	<i>Oberster Gerichtshof</i>
OJ	<i>Official Journal</i> (EU)
P & CR	<i>Planning and Compensation Reports</i>

Prop.	Proposition (Governmental legislative proposal, Sweden)
QB	<i>Queen's Bench Division Reports</i>
QBD	Queen's Bench Division
RAO	<i>Rechtsanwaltsordnung</i> (Lawyer's Code, Austria)
Resp. Civ. prev.	<i>Responsabilità civile e previdenza</i>
RH	<i>Rättsfall från hovrätterna</i> (Court of Appeal cases, Sweden)
RH	<i>Reglamento Hipotecario</i>
Riv. Crit. Dir. Priv.	<i>Rivista Critica di Diritto Privato</i>
Riv. Dir. Civ.	<i>Rivista di Diritto Civile</i>
Riv. Not.	<i>Rivista Notarile</i>
RJ	<i>Repertorio de Jurisprudencia</i> (Law Reports, Spain)
RTD civ.	<i>Revue trimestrielle de droit civil</i>
Rv	<i>Wetboek van burgerlijke rechtsvordering</i> (Code of Civil Procedure, the Netherlands)
RvdW	<i>Rechtspraak van de Week</i>
SC	Session Cases (Reports of the Court of Sessions, Scotland)
SC	Supreme Court (in Irish report)
Sch.	Schedule
Sh. Ct.	Sheriff Court (Scotland)
SI	Statutory Instrument
Sim. & St.	<i>Simon &amp; Stuart's Vice Chancellor Reports</i>
SLT	<i>Scots Law Times</i>
SR	<i>Systematische Sammlung des Bundesrechts</i> (in Swiss report)
SS.	<i>Sentencia Supremo</i> (resolution, Supreme Court, Spain)
SSI	Scottish Statutory Instrument
SZ	<i>Entscheidungen des österreichischen Obersten Gerichtshofes in Zivil- (und Justizverwaltungs-) sachen</i> (Supreme Court decisions, Austria)
SZ	<i>Süddeutsche Zeitung</i>
TCC	Turkish Civil Code
TCO	Turkish Code of Obligations
TLATA	Trusts of Land and Appointment of Trustees Act
TUPAS	Bank identification service (Finland)
U	<i>Ugeskrift for Retsvaesen</i>

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UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UNECE	United Nations Economic Commission for Europe
Ves.	<i>Vesey's English Chancery Reports</i>
Vita Not.	<i>Vita Notarile</i>
WLR	<i>Weekly Law Reports</i>
WR	<i>Woonrecht</i> (Living rights, the Netherlands)
WVK	<i>Wetboek van Koophandel</i> (Commercial Code, Belgium)
Zeup	<i>Zeitschrift für Europäisches Privatrecht</i> (Journal, Germany)
ZGB	<i>Schweizerisches Zivil Gesetzbuch</i> (Civil Code, Switzerland)
ZPO	<i>Zivilprozessordnung</i> (Code of Civil Procedure, Switzerland)
ZVG	<i>Zwangsversteigerungsgesetz</i> (Statute for the Compulsory Auction and Compulsory Administration, Germany)